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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 37

MARTIN V. B. COE, PETITIONER,

vs.

KATHARINE C. COE

ON WRIT OF CERTIORARI TO THE PROBATE COURT FOR THE COUNTY
OF WORCESTER, COMMONWEALTH OF MASSACHUSETTS

PETITION FOR CERTIORARI FILED JANUARY 22, 1947.

CERTIORARI GRANTED MARCH 3, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 37

MARTIN V. B. COE, PETITIONER,

vs.

KATHERINE C. COE

ON WRIT OF CERTIORARI TO THE PROBATE COURT FOR THE COUNTY
OF WORCESTER, COMMONWEALTH OF MASSACHUSETTS

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PETITION FOR CONTEMPT

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Katharine C. Coe of Worcester in said County, wife of Martin V. B. Coe of said Worcester that upon her petition for separate support heretofore filed in said Court against said Martin V. B. Coe, said Court, by its decree made on the 25th day of March, A. D. 1942, ordered said Martin V. B. Coe, to pay your petitioner for the support of herself the sum of 35 dollars forthwith, and a further sum of 35 dollars each and every Wednesday thereafter; and that said decree is still in force.

And your petitioner further says that said husband Martin V. B. Coe has not obeyed said decree, and has not paid her said sums of money and that there now remains due and unpaid to your petitioner under said decree the sum of Thirteen Hundred dollars.

Wherefore your petitioner prays that said husband Martin V. B. Coe may be cited to appear before said Court to show cause why he should not be adjudged in contempt of Court for his failure to obey said decree, and for such other relief as to said Court may seem meet.

Dated this 20th day of May A. D. 1943.

KATHARINE C. COE

WORCESTER, ss. May 20, A. D. 1943. Then personally appeared the above named Katharine C. Coe and made oath that the allegations contained in the foregoing petition are true.

Before me,

FRANCIS P. McKEON,
Notary Public.

Filed: May 22, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

vs.

MARTIN V. B. COE

RESPONDENT'S ANSWER TO PETITION FOR CONTEMPT

1. The respondent admits that a decree was entered for the support of the respondent on March 25, 1942.
2. The respondent specifically denies that the petitioner is the wife of the respondent.
3. The respondent specifically denies that the decree of March 25, 1942 is still in effect.
4. The respondent specifically denies that he has failed to obey said decree of March 25, 1942.
5. The respondent specifically denies that he owes the petitioner any sum of money under said decree of March 25, 1942.
6. And further answering the respondent says that the petitioner obtained a divorce from the respondent on the 19th day of September, 1942 in the First Judicial District Court of the State of Nevada and that said decree of divorce bars the petitioner from maintaining her petition for contempt.
7. And still further answering the respondent says that the petitioner obtained a divorce from the respondent on the 19th day of September, 1942 in the First Judicial District of the State of Nevada and that the circumstances and conduct of the petitioner in said proceedings in Nevada bar her from maintaining her petition for contempt.

MARTIN V. B. COE

Filed: Sept. 7, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

SPECIAL APPEARANCE

Now comes Samuel Perman and says that service of the citation in the above entitled cause was made on him and that said service was improper and ineffectual.

SAMUEL PERMAN.

Filed: July 3, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

SPECIAL APPEARANCE

Now comes Samuel Perman and says that service of the citation in the above entitled cause was made on him and that said service was improper and ineffectual.

SAMUEL PERMAN.

Filed: July 3, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

**PROBATE COURT
No. 131205**

KATHERINE C. COE

VS.

MARTIN V. B. COE

MOTION TO DISMISS

The respondent appearing specially, says that service made upon Samuel Perman, his former counsel, did not confer jurisdiction upon this court and moves that the petition be dismissed.

By his Attorney,
SAMUEL PERMAN.

Filed: July 3, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

MOTION TO DISMISS

The respondent, appearing specially, says that service made upon Samuel Perman, his former counsel, did not confer jurisdiction upon this court and moves that the petition be dismissed.

By his Attorney,
SAMUEL PERMAN.

Filed: July 3, 1943.

**CASE 131205
WORCESTER, SS.**

APPEARANCE

PROBATE COURT

In the matter of Katherine C. Coe vs. Martin V. B. Coe. Petition for Contempt.

TO THE REGISTER

Enter my appearance for Martin V. B. Coe.

Filed: Aug. 17, 1943.

**SAMUEL PERMAN, Attorney
Address, 332 Main St.**

PETITION FOR MODIFICATION

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:

RESPECTFULLY represents Katharine C. Coe who moves that the decree heretofore entered herein whereby the respondent was ordered to pay her Thirty-Five and 00/100 (\$35) Dollars per week be modified, and that an award be made to her commensurate with the respondent's ability to pay for your petitioner's reasonable needs.

KATHARINE C. COE.

Filed: Aug. 30, 1943.

AMENDMENT OF PETITION FOR MODIFICATION OF DECREE

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:

RESPECTFULLY represents your petitioner that she moves to amend her petition as follows:

AMENDED PETITION

Your petitioner says that

1. she and the respondent were lawfully married on May 16, 1934;
2. they have lived together as husband and wife ever since that date in Worcester, Massachusetts until said respondent caused a separation of the parties on or about December 1939;
3. by decree of this court entered in March 1942 in case #9494, the respondent's libel for divorce from your petitioner was dismissed;
4. by decree of this court in March 1942 in case #131205, your petitioner was found to be justifiably living apart from the respondent;
5. by virtue of the said marriage and by the legal effect of said decrees, she is the lawful wife of the respondent;
6. by said decree in case #131205, the respondent was ordered to pay \$35.00 weekly for the separate maintenance of your petitioner, and has made no payments thereon since September 19, 1942;
7. under all the facts and circumstances, including the increased costs of living, the adequate financial means of the respondent and the

reasonable needs of your petitioner according to her status of life of which the respondent wrongfully deprived her, \$35.00 per week is, in amount insufficient in fact and in law.

WHEREFORE SHE PRAYS that

1. the court award her for her separate maintenance an increased allowance in accordance with all the facts and circumstances and according to the laws of Massachusetts.

2. the court award such other and further relief as the petitioner may be equitably entitled to.

KATHARINE C. COE.

Filed: Oct. 21, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of October, in the year of our Lord one thousand nine hundred and forty-three.

On the foregoing petition it is decreed that said petition be and the same is hereby allowed.

CARL E. WAHLSTROM,
Judge of Probate Court.

MOTION FOR DECREE PRO CONFESSO

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Katharine C. Coe and moves that the allegations in her petition for contempt be taken *pro confesso*.

KATHARINE C. COE.

Filed: Aug. 30, 1943.

DECREE DISMISSED SEPT. 20, 1943

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twentieth day of September, in the year of our Lord one thousand nine hundred and forty-three.

On the petition of Katharine C. Coe, petitioner in separate support proceedings against Martin V. B. Coe, praying that the allegations in her petition for contempt be taken *pro confesso*;

and it appearing to the Court proper,

It is decreed that said motion be and the same is hereby denied.

CARL E. WAHLSTROM,
Judge of Probate Court.

PETITION FOR REVOCATION

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Martin V. B. Coe and says

1. That on the 25th day of March, 1942 on a petition by Katherine C. Coe, then the wife of your petitioner a decree was entered for the support of the said Katherine C. Coe.
2. That the said Katherine C. Coe has petitioned this Court to adjudge your petitioner in contempt for failure to obey said decree.
3. That by virtue of a decree dated September 19, 1942 duly entered in the First Judicial District of the State of Nevada the said Katherine C. Coe was awarded a judgment dissolving the marriage between the said Katherine C. Coe and your petitioner and they are no longer husband and wife.
4. That since the entry of the decree of March 25, 1942 the conditions and relations between your petitioner and said Katherine C. Coe have become so materially altered as to require revocation or modification of said decree.

Wherefore your petitioner prays:

1. That this Honorable Court adjudge that your petitioner and the said Katherine C. Coe are no longer husband and wife.

2. That the petition against him for contempt be dismissed.

3. For such other and further relief as this Honorable Court deems equitable in the premises.

MARTIN V. B. COE.

Filed: Sept. 7, 1943.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:

DEMURRER AND ANSWER

I. Now comes Katharine C. Coe and demurs to pars. 3 and 4 of the petition for modification or revocation filed herein by Martin V. B. Coe, and, for causes of demurrer, assigns the following:

1. Said paragraphs do not state facts with substantial certainty, but merely allege conclusions of law;

2. whether said divorce, mentioned in par. 3 was valid and binding cannot be decided without the facts relating thereto being adequately stated—they are not so stated;

3. the "conditions and relations" mentioned in par. 4 thereof, are not stated factually, and as stated do not raise any issue of fact, and do not inform the court or the despondent of the nature and grounds of said alleged material change therein.

ANSWER

II. Answering the petition for modification or revocation filed herein by Martin V. B. Coe she says that

1. She admits the allegation of fact contained in pars. 1 and 2 thereof.

KATHARINE C. COE.

Filed: Sept. 20, 1943.

MOTION FOR SPECIFICATIONS, ETC.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

Your Petitioner moves that all the causes of the Respondent's answer subsequent to clause 1 therein be stricken therefrom, on the ground that the same disclose no defense, and the same violate the rules of pleading.

KATHERINE C. COE.

Filed: Sept. 13, 1943.

DECREE DENIED SEPT. 20, 1943

COMMONWEALTH OF MASSACHUSETTS

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twentieth day of September, in the year of our Lord one thousand nine hundred and forty-three.

On the petition of Katherine C. Coe, petitioner in separate support proceedings against Martin V. B. Coe, praying that all the causes of the respondent's answer subsequent to Clause 1 therein be stricken therefrom, on the grounds that the same disclose no defense, and the same violate the rules of pleading; and it appearing to the Court proper,

It is decreed that said motion be and the same is hereby denied.

CARL E. WAHLSTROM,
Judge of Probate Court.

DECREE OVERRULED

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twentieth day of September, in the year of our Lord one thousand nine hundred and forty-three.

On the foregoing demurrer of Katharine C. Coe to the petition for

modification and revocation filed by Martin V. B. Coe, and it appearing to the Court proper,

It is decreed that said demurrer be and the same is hereby overruled.

CARL E. WAHLSTROM,
Judge of Probate Court.

WORCESTER, SS.

CASE 131205

APPEARANCE

PROBATE COURT

In the matter of Katherine C. Coe vs. Martin V. B. Coe, petition for Modification.

TO THE REGISTER

Enter my appearance for Martin V. B. Coe.

SAMUEL PERMAN, Attorney.
Address, 332 Main St.
Worcester, Mass.

Filed: Sept. 20, 1943.

PETITION AND DECREE FOR COUNSEL FEES

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Katharine C. Coe of Worcester in the County of Worcester that on the 11th day of January A.D. 1941 she filed a petition against Martin V. B. Coe of Worcester in the County of Worcester praying the Court for reasons therein set forth to make such order as it deems expedient concerning her support and there is now pending before this Court a petition to revise or modify said decree, and that said petition is now pending in this Court, and said husband Martin V. B. Coe has appeared in opposition to the allowance thereof.

Wherefore your petitioner prays that said husband Martin V. B. Coe be ordered to pay into Court for her use such sum of money as may enable her to maintain said petition.

Dated this 22nd day of September A.D. 1943.

KATHARINE C. COE.

Filed: Sept. 22, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and forty-three.

On the petition of Katharine C. Coe of Worcester in the County of Worcester, praying that Martin V. B. Coe of Worcester in the County of Worcester, may be ordered to pay into Court for her use a sum of money sufficient to enable her to maintain her petition for separate maintenance.

It is decreed that said petition be and the same is hereby dismissed.

CARL E. WAHLSTROM,
Judge of Probate Court.

WORCESTER, SS.

PROBATE COURT

KATHARINE C. COE, Petitioner

MARTIN V. B. COE, Respondent

APPLICATION FOR ALLOWANCE

Now comes Katharine C. Coe, petitioner in the above-described petition for separate support and moves that Martin V. B. Coe, respondent named therein may be required to pay into Court for her use a sum to enable her to maintain said petition pendente lite.

KATHARINE C. COE,
Petitioner.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SEPT. 23, 1943.

ORDERED, said petition be and the same is hereby dismissed.

CARL E. WAHLSTROM,
Judge of Probate Court.

Filed: Sept. 23, 1943.

PETITION FOR MODIFICATION OF DECREE

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Katharine C. Coe of Worcester in the County of Worcester, that on the 11th day of January A.D. 1941 she filed a petition against Martin V. B. Coe of Worcester, in the County of Worcester, praying the Court for reasons therein set forth to make such order as it deems expedient concerning her support, and there is now pending before this Court a petition to revise or modify said decree, and that said petition is now pending in this Court, and said husband, Martin V. B. Coe, has appeared in oppositon to the allowance thereof.

Wherefore your petitioner prays that said husband, Martin V. B. Coe, be ordered to pay into Court for her use such sum of money as may enable her to maintain said petition.

Dated this 22nd day of September, A.D. 1943.

KATHARINE C. COE.

Filed: Aug. 30, 1943.

COMMONWEALTH OF MASSACHUSETTS

DECREE DISMISSED SEPT. 28, 1943

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and forty-three.

On the petition of Katherine C. Coe of Worcester, in the County of Worcester, praying that Martin V. B. Coe of Worcester, in the County of Worcester, may be ordered to pay into Court for her use a sum of money sufficient to enable her to maintain her petition for separate maintenance.

It is decreed that said petition be and the same is hereby dismissed.

CARL E. WAHLSTROM,
Judge of Probate Court.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

DEMURRER OF RESPONDENT

Now comes Martin V. B. Coe and demurs to the petitioner's petition for modification of a decree for separate support and as grounds therefore says:

1. That the petitioner has failed to allege any ground sufficient in law to warrant the relief prayed for.
2. That this Honorable Court is without jurisdiction to modify said decree.
3. That the issues involved herein have already been fully and adequately determined.

MARTIN V. B. COE.

Filed: Oct. 2, 1943.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

PLEA IN BAR

Now comes the respondent and without waiving the demurrer to the petition for modification says that the petitioner is barred from maintaining said petition for modification and assigns as grounds therefore:

1. That the grounds assigned for modification have been fully determined and adjudicated by decree of this Probate Court dated March 25, 1942.
2. That on September 19, 1942 the said petitioner was divorced from the respondent by decree of the First Judicial District of the State of Nevada.

MARTIN V. B. COE.

Filed: Oct. 2, 1943.

COMMISSIONER TO TAKE TESTIMONY

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

In the above entitled case, at the hearing of the same it is ordered, under the provisions of General Laws, Chap. 215, § 18, at the request of Francis P. McKeon, that Florence E. Belleville be, and she hereby is, appointed Commissioner to take evidence in said case, to be reported to the Supreme Judicial Court.

CARL E. WAHLSTROM,
Judge of Probate Court.

Filed: October 15, 1943.

MOTION TO DISMISS

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHARINE C. COE

VS.

MARTIN V. B. COE

Now comes the respondent and moves that the petition for modification against him be dismissed and assigns as grounds therefore the following:

1. That the record of the Nevada proceedings is entitled to full faith and credit by this Honorable Court.
2. That the petitioner having invoked the jurisdiction of the Nevada Court and having obtained a divorce therein cannot now be heard to collaterally impeach the validity of the Nevada decree.
3. That the petitioner having invoked the jurisdiction of the Nevada Court and having obtained a divorce therein cannot now be heard to collaterally question the validity of the Nevada decree on the ground that the Nevada Court lacked jurisdiction.

4. That the petitioner having personally appeared in the Nevada proceedings and having filed a demurrer, answer and counter claim and participating in the proceedings by testifying cannot now be heard to raise any issue that was raised and determined or that they might have raised in the Nevada Court.

5. That the petitioner by appearing in the Nevada proceedings and filing a demurrer and counter claim and having obtained the relief she sought is now precluded from impeaching by collateral attack any of the recitals contained in the Nevada decree.

6. That the petitioner having admitted under oath by answer the respondent's compliance with the Nevada laws necessary to confer jurisdiction and having herself invoked the jurisdiction of the Nevada Court and obtained a decree of divorce therefrom under her counter claim cannot now collaterally attack the validity of the Nevada decree on the ground that the Nevada Court did not have jurisdiction of the parties and of the cause.

7. That as a matter of law, the petitioner having prevailed in the Nevada proceedings and obtained therein a decree of divorce and having failed to take any appeal therefrom in Nevada cannot now collaterally question the validity of the Nevada decree.

8. That the recitals contained in the Nevada record are binding and conclusive on the petitioner.

9. That the recitals contained in the Nevada decree of divorce are binding and conclusive on the petitioner.

10. The petitioner cannot maintain a petition in a court of equity to repudiate a decree obtained by her where the purpose of the repudiation is the "gratifying the malignity" of the petitioner against the respondent "with whom she has no intention of living but whom she wishes to injure and embarrass".

By his Attorney,
SAMUEL PERMAN.

Filed: Oct. 15, 1943.

DECREE OCT. 21, 1943

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of October, in the year of our Lord one thousand nine hundred and forty three.

On the petition of Martin V. B. Coe of said Worcester, praying that the petition for modification of decree brought by Katharine C. Coe be dismissed;

All persons interested having been heard and objection being made and it appearing to the Court that the parties are no longer husband and wife, it is decreed that said petition be and the same is hereby allowed.

CARL E. WAHLSTROM,
Judge of Probate Court.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT / DEMURRER TO AMEND PETITION FOR MODIFICATION

Now comes the respondent in the above cause and demurs to the petitioner's petition for modification and assigns as causes for such demurrer, the following causes:

1. That the allegations of said petition are vague, indefinite and state mere general conclusions.
2. That the allegations of said petition do not set forth any cause of action with the certainty and definiteness required by law.
3. That the allegations of said petition do not allege a cause of action.
4. That the allegations of said petition do not allege any adequate grounds for the relief sought.

MARTIN V. B. COE.

Overruled:

July 10, 1944.

THOMAS H. STAPLETON

Filed: June 23, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S ANSWER TO AMENDED PETITION OR MODIFICATION

Now comes the respondent in the above cause and without waiving the demurrer heretofore filed, but expressly relying on the same, for answer says:

1. The respondent denies each and every material allegation in said amended petition alleged, except the allegations contained in par. 1.
2. And further answering the respondent says that on or about September 19, 1942, the petitioner obtained a decree of divorce from the respondent in Nevada by a Court of competent jurisdiction, having jurisdiction of the cause of action and of the parties, all of which more fully appears in Exhibit 2 in the record of this cause, and that said decree is a bar to the maintenance of this action.
3. And further answering the respondent says that the petitioner and the respondent entered into a written agreement under seal in Nevada on or about September 16, 1942 under the terms of which contract the petitioner received the sum of \$7500 and covenants for her support and in consideration the petitioner covenanted to waive, release, surrender and relinquish to the respondent "all rights to any future support and maintenance for herself", the complete terms of said contract being set out in Ex. 2 in the record of this cause, and that the receipt and retention of said sum of money by the petitioner and the terms of said contract bar her from maintaining this action.

MARTIN V. B. COE.

Filed: June 23, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

MOTION FOR LEAVE TO FILE DEMURRER

Now comes the respondent in the above entitled cause and moves that he be allowed to demur to the petitioner's amended petition for modification.

MARTIN V. B. COE.

Motion allowed July 10, 1944

THOMAS H. STAPLETON
Judge of Probate.

Filed: June 23, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S SUBSTITUTED PLEA IN BAR TO PETITION FOR
CONTEMPT AND AMENDED PETITION FOR MODIFICATION

Now comes the respondent and without waiving his demurrer to the petitioner's Amended Petition for Modification moves that he be allowed to substitute for the Plea in Bar heretofore filed the following:

The respondent says that on or about the 19th day of September, 1942 the petitioner was divorced from the respondent by decree of the First Judicial District of the State of Nevada, a court of competent jurisdiction having jurisdiction of the cause of action and of the parties, the said decree including also a ratification approval and confirmation of a written contract under seal entered into between the parties on or about September 16, 1942 in the State of Nevada fully and finally settling all property

rights between the parties, which decree and contract is set forth in full detail in Exhibit 2 of the record of this cause, and that said Nevada proceedings, decree and contract are a bar to the maintenance of these actions.

MARTIN V. B. COE.

Motion Allowed:

July 10, 1944.

THOMAS H. STAPLETON
Judge of Probate.

Filed: June 23, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHERINE C. COE

vs.

MARTIN V. B. COE

In the above entitled case, at the hearing of the same it is ordered, under the provisions of General Laws, Chap. 215, § 18, at the request of Francis P. McKeon, Atty., that Laura G. Quinn be, and she hereby is, appointed Commissioner to take the evidence in said case, to be reported to the Supreme Judicial Court.

THOMAS H. STAPLETON,
Judge of Probate Court.

Filed: July 10, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

vs.

MARTIN V. B. COE

MOTION FOR ISSUANCE OF A COMMISSION TO TAKE THE DEPOSITION
OF ALAN BIBLE, OF CARSON CITY, NEVADA, UPON WRITTEN
INTERROGATORIES

Now comes the respondent in the above cause and moves that a commission be issued to Oliver Custer, Esquire, Stack Building, Reno, Nevada, for the purpose of taking the deposition of Alan Bible, Carson City, Nevada upon written interrogatories.

MARTIN V. B. COE,
By his Attorney
SAMUEL PERMAN.

Filed: Sept. 5, 1944.

WORCESTER, SS.

SEPT. 18, 1944.

Let the commission as prayed for be issued:

CARL E. WAHLSTROM,
Judge of Probate Court.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

vs.

MARTIN V. B. COE

RESPONDENT'S OBJECTIONS TO PETITIONER'S CROSS-INTERROGATORIES

Now comes the respondent and objects to the form and substance of petitioner's cross-interrogatories number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

MARTIN V. B. COE,
By his Attorney
SAMUEL PERMAN.

Filed: Sept. 15, 1944.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

MOTION TO VACATE CERTIFICATION

Now comes Martin V. B. Coe, respondent in the above entitled petitions for contempt and modification and moves that certification of said causes for hearing before the Honorable Thomas H. Stapleton be vacated and assigns as grounds therefore the following:

1. That said certification was made without notice to the respondent or his counsel and without an opportunity to be heard.
2. That the said causes are before the Probate Court upon rescript from the Supreme Judicial Court after the said causes were partially heard and evidence offered before the Honorable Carl E. Wahlstrom.
3. That the said causes are not before the Probate Court as de novo proceedings.
4. That the said causes arise out of a decree rendered in proceedings fully heard and determined by the Honorable Carl E. Wahlstrom.
5. That the said causes are in large measure dependent upon former proceedings heard by the Honorable Carl E. Wahlstrom.
6. That the Honorable Carl E. Wahlstrom is available and competent to hear and determine the issues involved in said causes.
7. That the certification of said causes to a Judge other than the Honorable Carl E. Wahlstrom does not accord with good Probate practice.
8. That the certification of said causes to a Judge other than the Honorable Carl E. Wahlstrom is in violation of the legal rights of the respondent.
9. That the certification of said causes to a Judge other than the Honorable Carl E. Wahlstrom is violative of the respondent's rights to due process of law.

MARTIN V. B. COE.

September 4, 1945.

On the foregoing motion it appearing that the certification referred to was entered on the docket in this case by mistake and inadvertence and has now been expunged,

It is decreed that this motion be disallowed.

HARRY H. ATWOOD,
Judge of Probate Court.

Filed: Oct. 19, 1944

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

COE

vs.

COE

Your petitioner, for her demurrer and answer to the respondent's "Motion to Vacate Certification," filed by him October 19, 1944, says as follows:

DEMURRER

1. The assignment of grounds for vacating said certification, each taken severally, state mere conclusions without setting forth the basic facts upon which they purport to be based;—no facts are alleged showing any right in the respondent which he is entitled to enforce; such facts as are stated are vague and indefinite, and fail to inform the Court and the petitioner of the specific right or rights claimed by the petitioner to have been invaded, and fail to allege necessary dates, and other relevant facts without which said "Motion to Vacate Certification" must be denied.

ANSWER

1. As to assignment 1, the petitioner denies that certification was made without notice to the respondent, and says that, by agreement of the parties entered into on or about June 22, 1944, July 10, 1944 was fixed as the trial date for the hearing of the petitioner's petitions and the respondent's petition and his other pleadings—on July 7, 1944, the parties hereto again agreed that all matters should be tried on July 10, 1944 with an understanding that the respondent should be granted a reasonable continuance of the trial to begin on said July 10, 1944, in order that he

might have reasonable opportunity to apply for a deposition to be forwarded to the State of Nevada; on said July 10, 1944, trial began before said Thomas H. Stapleton as presiding Judge, who acted under the authority of a certification duly made on July 7, 1944; at said trial on July 10, 1944, the respondent made no objection to trial, but participated therein without raising any objection, and asked for leave, which was granted, to file certain pleadings, and requested certain orders, rulings, and directions to be made, which were made,—a detailed statement of which is appended hereto, marked "A"—and, after the foregoing acts of the respondent, at his request and by agreement of the petitioner, said trial was adjourned to be continued at a convenient date to be selected by said presiding Judge; thereafter, on or about September 5, 1944, the respondent filed in said case his motion to take the deposition of one Alan Bible, of Nevada, upon written interrogatories, and gave to the petitioner a copy of his motion and of his interrogatories; on or about September 14, 1944, the respondent filed in said case his objections to petitioner's Cross-Interrogatories, and gave to the petitioner a copy thereof; on or about September 16, 1944, the Probate Court delivered, and the respondent received, said deposition to be forwarded to Nevada; on or about October 19, 1944, the petitioner and respondent being at the Probate Court with reference to the petitioner's request for the fixing of a date for the continuance of said trial begun on July 10, 1944, the respondent filed this motion, whereupon the question of fixing a date for continuing said trial was postponed. Wherefore, it appears that the said "Motion to Vacate Certification" has no standing, that the respondent consented to the trial before said Judge Stapleton on July 10, 1944, and actually participated in said trial on said date, and by his subsequent acts has waived any rights in the premises which he may have had—he had ample opportunity on said July 10, 1944,—and perhaps for a reasonable time thereafter,—to make any valid objection, but instead consented to be heard, was heard and afforded remedies by said Judge Stapleton on July 10, 1944, and thereafter availed himself of certain rulings made by said Judge Stapleton, and said trial so held on July 10, 1944 was, with the knowledge and consent of the respondent, continued for later hearing.

2. The rescript came down June 5, 1944; on June 14, 1944, the respondent filed a motion for specifications in said case, and gave the

petitioner a copy thereof; on or about June 22, 1944, Judge Carl E. Wahlstrom stated to the parties and to the Register that he would not further act in said case, that Judge Atwood would not sit either, and that therefor some other available Judge would have to be certified to hear the case further, which certification was made on said July 7 1944. Wherefore, it appears that the respondent knew from on or about said June 22, 1944, that neither of the Worcester Probate Judges would sit further in the case, and that the matter to be heard and tried would be duly certified to be heard and tried by some other Probate Judge.

3. The matters alleged herein are irrelevant and immaterial, and what is material is that the respondent knew from on or about June 22, 1944, that said causes would be heard and tried before some judge other than the sitting judges of the Worcester Probate Court, and that trial thereof had actually begun before Judge Stapleton on said July 10, 1944.

4. Said causes do not, in any material or legal sense "arise" out of a decree in proceedings "fully" heard and "determined" by the Honorable Carl E. Wahlstrom, and, if they did, the latter has repeatedly announced to the knowledge of the respondent, that he would not act any further in the case, and both the respondent and petitioner have since acted in reliance upon Judge Wahlstrom's said announcement that he would not hear the case further, and, as he said, that, in the circumstances, some judge other than the judges of the Worcester Probate Court would have to be certified to hear and decide all matters between the parties.

5. This assignment is of lesser import than assignment 4; and raises no new matter which is not included in assignment 4.

6. As stated, Judge Wahlstrom, from on or about June 22, 1944, to the knowledge of all parties, has declared that he was not "available" to act further in the case, and, on July 7 to 10th, 1944, he was not actually available to hear the case, being then away from the city upon vacation, while on July 7, 1944, no other judge was so "available," wherefore, on that date, Judge Stapleton was certified as being "available" to hear and decide all issues involved in said causes. Wherefore, said Judge Wahlstrom was not on July 10, 1944, and is not now, "available" to act in said case.

7. No facts are stated in this assignment.

8. As stated, the respondent as well as the petitioner, on or about June 22, 1944, accepted the situation as outlined above to the effect that Judge Wahlstrom would not hear the case further, and that some judge other than the Worcester Probate Judges would be certified to hear and decide said case thereafter. The respondent shows no facts which authorize him to insist upon a hearing before Judge Wahlstrom.

9. This assignment states no facts.

The respondent shows no facts to support his said motion, nor any legal rights which have been violated, — on the contrary he has assented and acquiesced in all that was done in this case up to October 19, 1944. His objection to a continuance of that trial before Judge Stapleton comes too late.

Wherefore, your petitioner insists that the trial of July 10, 1944, be continued before Judge Stapleton, and that said Judge Stapleton fix a definite trial date therefor at his earliest convenience, as authorized by said certification of July 7, 1944.

Said certification was duly and legally made under G.L. c. 217 chap. 8, and the respondent shows no cause, in law or in fact, authorizing the allowance of his said "Motion to Vacate Certification," filed by him on October 19, 1944.

KATHARINE C. COE,
By her Atty.
FRANCIS P. McKEON.

KATHARINE C. COE.

Filed: Oct. 24, 1944.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:

REPRESENTS Martin V. B. Coe of Worcester in the County of Worcester, respondent in petition for contempt and modification brought by Katherine C. Coe, petitioner, that he is aggrieved by a decree of the Probate Court held at Worcester, in said County of Worcester, on the 18th day of January, A.D. 1945, whereby said Court ordered and directed counsel, their parties and witnesses in said cause to trial before the Honorable Thomas H. Stapleton.

And he is hereby gives notice that he claims an appeal from said decree to the Supreme Judicial Court.

MARTIN V. B. COE,
By his Attorney
SAMUEL PERMAN.

Filed: Jan. 18, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S INSISTENCE ON OBJECTIONS TO ASSIGNMENT TO
THE HONORABLE THOMAS H. STAPLETON

The respondent hereby gives notice that he insists on all objections heretofore made to the assignment of these cases to the Honorable Thomas H. Stapleton and hereby gives notice that he renews all of his objections to said Judge Stapleton prior to any hearing by said Judge Stapleton and during each and every hearing or proceeding heard or undertaken to be heard by Judge Stapleton with reference to any issue or issues on the merits of these cases.

The respondent as grounds for his objections to the assignment to Judge Stapleton assigns all the grounds and reasons set forth in his Motion to Revoke Assignment for Hearing to the Honorable Thomas H. Stapleton.

MARTIN V. B. COE.

Filed: Jan. 22, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S NOTICE OF INSISTENCE ON PRESERVATION OF
CONSTITUTIONAL RIGHTS

The respondent in the above entitled petitions for contempt and modification hereby gives notice that he insists on preserving all Constitutional rights involved in the above entitled cause.

MARTIN V. B. COE.

Filed: Jan. 22, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

MOTION TO VACATE DECREE

Now comes Martin V. B. Coe respondent in petitions for contempt and modification arising out of a decree made March 25, 1942 by the Honorable Carl E. Wahlstrom, and says that assignment of said petitions for contempt and modification made January 18, 1945 after partial trial and after rescript from the Supreme Judicial Court to the Honorable Thomas H. Stapleton despite the availability of the said Judge Wahlstrom is such palpable error and a violation of the respondent's legal and constitutional rights as to taint and vitiate all the proceedings and requires revocation of the decree of March 25, 1942.

The respondent moves that said decree of March 25, 1942 be vacated.

MARTIN V. B. COE.

Filed: Jan. 22, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHARINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S MOTION TO REVOKE ASSIGNMENT FOR HEARING BEFORE
THE HONORABLE THOMAS H. STAPLETON.

Now comes the respondent, in the above entitled petitions and moves that the assignment made by the Honorable Carl E. Wahlstrom on the 18th day of January, 1945 directing the trial of the above causes on the merits before the Honorable Thomas H. Stapleton be revoked, rescinded and set aside and that the said causes be assigned for trial before the Honorable Carl E. Wahlstrom.

The respondent assigns as reasons therefore the following:

1. That the said assignment for trial is not based upon any authority, statutory or otherwise warranting such action.
2. That the said assignment is in violation of the mandate contained in the rescript issued from the Supreme Judicial Court.
3. That the said assignment is in violation of the rule of the Probate Court for Worcester County requiring the Judge who made the decree to hear petitions for contempt and modification relating to said decree.
4. That the said assignment is prejudicial to the respondent in that it would require a Judge to pass upon issues involving modification and contempt without a complete knowledge of all the facts that entered into the original decree.
5. That the said assignment is prejudicial to the respondent in that it would require a judge to pass upon the merits of a cause after hearing only one of the parties.
6. That the said assignment was contrived by conduct of counsel for the petitioner inconsistent with his obligation of fidelity and loyalty to the court.
7. That the said assignment was contrived by conduct of counsel for the petitioner to secure by said petition a review of discretionary matter not only fully determined by said Judge Wahlstrom but affirmed by the Supreme Judicial Court.

8. That the said assignment is wholly void and of no legal effect.
9. That the said assignment confers no power to the assigned judge to render a valid decree upon proceedings that would be a nullity.
10. That in the absence of any basis for legal disqualification and being available, it is the obligation and the duty of said Judge Wahlstrom to continue with said cases in accordance with well established principles of fundamental law, constitutional law and in accordance with the direction of the Supreme Judicial Court by its opinion.
11. That the said assignment is violative of the respondent's constitutional rights.

In support of said motion the respondent has attached herewith an affidavit.

MARTIN V. B. COE.

AFFIDAVIT.

Now comes Samuel Perman, and says that he is counsel of record for the respondent, Martin V. B. Coe, and on oath deposes as follows:

1. These proceedings are petitions for contempt and modification relating to a decree entered March 25, 1942 by Judge Carl E. Wahlstrom after full and complete hearing on the merits and reported in 331 Mass. 232.
2. The said petitions duly came on for hearing before Judge Carl E. Wahlstrom and after the respondent had rested his case decrees were entered by the said Judge dismissing the petitions for contempt and modification and revoking the original decree.
3. On appeal by the petitioner the Supreme Judicial Court the decrees appealed from were reversed and the cases were ordered "to stand for hearing in conformity" with the opinion.
4. Your deponent is informed and believes that after petitioners appeal and before opinion, petitioner's counsel openly stated that in the event of favorable decision he would take appropriate measures to remove said Judge Wahlstrom from said cases.
5. Your deponent is informed and believes that after the Supreme Court decision that petitioner's counsel ex parte informed Judge

Wahlstrom that he objected to the said Judge continuing in said causes.

6. Shortly after the decision rendered by the Supreme Judicial Court at a conference at which both counsel were present, the said causes were assigned for trial the last week of June, 1944, Judge Wahlstrom informing counsel that he would not be available during the month of July, 1944 because of summer vacation.
7. Relying upon said assignment for trial your deponent forthwith filed certain pleadings to complete the pleadings, reserving the right to file depositions should the circumstances require such evidence.
8. Prior to the trial date, counsel for the petitioner informed Judge Wahlstrom that he could not proceed to trial because of inability of a witness to attend and because said trial date conflicted with alumni class reunion exercises.
9. Your deponent believes and therefor alleges that counsel for the petitioner pursuant to a plan scheme and method for obtaining a substitution of judges and thus obtaining extra-legal advantageous rights not otherwise available to the petitioner, did on the seventh day of July, 1944 ex parte consult with the Honorable Harry H. Atwood; your deponent is informed and believes that at said time counsel for the petitioner obtained a request to the Honorable Thomas H. Stapleton based on the unavailability of the judges of the Probate Court for Worcester County.
10. Your deponent is informed and believes that said request was made by said Judge Atwood without a full disclosure of all the facts and was not intended as a request for said Judge Stapleton to act in these cases.
11. By some means not known to your deponent the said cases were entered on the Probate Docket assignment record for July 10, 1944.
12. By some means not known to your deponent the said request was entered on the docket of these cases.
13. That your deponent had no knowledge of the said assignment of July 10, 1944 or until July 7th or 8th, 1944 and appeared at Probate Court on said July 10th to ascertain the purpose of said assignment.
14. On July 10, 1944 the Register of Probate informed both counsel that said Judge Stapleton would hear the parties; at said time Judge Stapleton was informed by both counsel that there would be no hearing

on the merits and at said time various interlocutory motions were heard and ruled upon by said Judge Stapleton.

15. At no time on said July 10, 1944 was there any evidence offered or presented by or for either of the parties; at no time was there any hearing or trial or any of the issues involved on the merits of these cases.

16. On or about October 19, 1944 your deponent first ascertained that a request to Judge Stapleton had been entered on the docket of these cases and on October 19, 1944 filed a "Motion to Vacate Certification" which was called to the attention of Judge Atwood who after ascertainment of the facts made the following decree on January 4, 1945.

"On the foregoing motion it appearing that the certification referred to was entered on the docket in this case by mistake and inadvertence and has now been expunged.

It is decreed that this motion be disallowed."

17. From this decree, the petitioner has appealed.

18. The determination as to the proper judge to hear these cases was heard several times by Judge Wahlstrom.

19. On January 5, 1945 the Register notified both counsel that the question of setting a date would be taken up by the Court on Friday, January 12, 1945.

20. Prior to January 12, 1945 both counsel conferred with Judge Wahlstrom concerning the judge to hear these cases following which conference the following notice dated January 9, 1945 was sent to both counsel:

"This is to clarify notice in regard to setting of a date for hearing in the Coe case which was sent you several days ago.

The matter of setting a date for the hearing of this case by Judge Wahlstrom will be called to the Courts attention at two o'clock on Friday, January 12th.

21. On January 12th, 1945 both counsel appeared before Judge Wahlstrom, counsel for the petitioner procuring a stenographer, and over objections and exceptions of petitioner's counsel on jurisdictional grounds, the week of February 5th was set by Judge Wahlstrom for the continuance of the hearing in these cases before him.

22. On January 18th, 1945 both counsel appeared before Judge Wahlstrom at his request and stated to counsel that he had received the transcript of the arguments on the various motions before Judge Stapleton and stated to counsel that he had decided that from said transcript Judge Stapleton would have the right to assume he was to hear these cases on the merits and that he, Judge Wahlstrom, was without jurisdiction to hear said cases on the merits and that sole jurisdiction vested in Judge Stapleton.

23. At said time your deponent requested Judge Wahlstrom to file a memorandum or decree so that your deponent could take such action as the interest of the respondent warranted and was advised that Judge Stapleton would hear these cases on the basis of the request made by Judge Atwood.

24. The respondent has claimed an appeal from the assignment made by Judge Wahlstrom on said January 18, 1945.

25. That the said Judge Wahlstrom is now available to hear said case.

26. That the request to Judge Stapleton dated July 7, 1944 and being case 143808 on the docket signed by Judge Atwood reads as follows:

"I request Honorable Thomas H. Stapleton, Judge of Probate, in and for the County of Hampden to perform part of the judicial duties of this Court by holding a simultaneous session of this Court at the Court House at Worcester, at times and places to be designated by said aforesaid Judge of Probate, by reason that neither of the Judges of Probate are available to hear said case."

SAMUEL PERMAN.

WORCESTER, MASS.

JAN. 22, 1945.

Personally appeared the above named Samuel Perman who made oath and said that the foregoing allegations contained in said affidavit are true to the best of his knowledge, belief and information.

Before me,
BERGE C. TASHJIAN,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the thirty-first day of January, in the year of our Lord one thousand nine hundred and forty-five.

On the petition of Martin V. B. Coe, praying to revoke the assignment for hearing before Honorable Thomas H. Stapleton, it appearing, and the Court finds that while Judge Carl E. Wahlstrom who had heard all previous matters in the Coe case was away on Summer vacation and thus unavailable, a certification was made authorizing Honorable Thomas H. Stapleton to sit and hold hearings in the Probate Court for Worcester County; that on July 10, 1944 said Honorable Thomas H. Stapleton did sit in said Probate Court at Worcester and among other matters had heard and decided four preliminary matters in the case of Katharine C. Coe vs. Martin V. B. Coe. This Court also finds that at said hearing before Honorable Thomas H. Stapleton various matters concerning the case were discussed and counsel submitted documents to said Court so that he might become familiar with what had transpired in the case, and a discussion was had regarding a continuance of the hearing.

The Court finds that practically one entire day was devoted to matters concerning said case. The Court further finds that both Honorable Thomas H. Stapleton and counsel for both parties believed that they had commenced hearings in said case and that the matter was therefore continued generally for further hearing before Honorable Thomas H. Stapleton. This Court therefore finds that said case is now before said Honorable Thomas H. Stapleton for hearing on all matters pending.

It is decreed that said petition be and the same is hereby dismissed.

CARL E. WAHLSTROM,
Judge of Probate Court.

Filed: Jan. 22, 1945.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:

REPRESENTS Martin V. V. Coe, respondent in petitions for contempt and modification in cases #131205, that he is aggrieved by a decree of the Probate Court held at Worcester, in said County of Worcester, on the 31st

day of January, A.D. 1945, whereby said Court denied respondent's Motion to Revoke Assignment for Hearing before the Honorable Thomas H. Stapleton.

And he hereby gives notice that he claims an appeal from said decree to the Supreme Judicial Court.

Dated this fifth day of February A.D. 1945.

MARTIN V. B. COE,
By his Attorney
SAMUEL PERMAN.

Filed: Feb. 5, 1945.

CASE 131205
WORCESTER, SS.

PROBATE COURT

In the matter of petition for increased allowance.

TO THE REGISTER

Enter my disappearance for Katherine C. Coe.

FRANCIS P. MCKEON, Attorney
Address, 390 Main St.

Filed: Feb. 5, 1945.

CASE 131205
WORCESTER, SS.

PROBATE COURT

In the matter of petition for increased allowance.

TO THE REGISTER

Enter our appearance for petitioner, Katherine C. Coe.

FUSARO & FUSARO,
Attorneys.

Filed: Feb. 5, 1945.

CASE 131205
WORCESTER, SS.

PROBATE COURT

In the matter of Katharine C. Coe vs. Martin Van Buren Coe.

TO THE REGISTER

Enter our appearance for Martin V. B. Coe.

VAUGHAN, ESTY, CLARK & CROTTY,
Attorneys.

Address, 332 Main St.,
Worcester, Massachusetts.

Filed: Feb. 9, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHARINE C. COE

vs.

MARTIN V. B. COE

MOTION TO STRIKE EVIDENCE FROM THE RECORD

Now comes Martin V. B. Coe, respondent in petitions for contempt and modification, and moves the Court strike from the record the following:

1. All the testimony concerning or relating to the respondent's domicile in Nevada.
2. All the testimony concerning, relating to or bearing upon any alleged violation by the respondent of the latter provisions of General Laws (Ter. Ed.) Chapter 208, Section 39.
3. All the testimony concerning, relating to or bearing upon any alleged violation by the petitioner of the latter provisions of General Laws (Ter. Ed.) Chapter 208, Section 39.
4. All the testimony impeaching or tending to impeach the pleadings of the parties before the Nevada Court.
5. All the testimony impeaching or tending to impeach the testimony of the parties before the Nevada court.

6. All the testimony impeaching or tending to impeach the decree of divorce obtained by the petitioner in Nevada.

7. All the testimony of the petitioner bearing upon any alleged invalidity of the property settlement contract entered into in Nevada between the parties.

8. All the testimony inconsistent with the position taken by the petitioner in Nevada.

9. All the testimony inconsistent with the position taken by the petitioner in the offer of proof made by her counsel before Judge Wahlstrom on October 15, 1943 and particularly the position taken that she did not go to Nevada for the purpose of evading the divorce laws of this Commonwealth.

10. All the testimony concerning, relating to or bearing upon the financial status or resources of the respondent prior to March 25, 1942.

11. All the testimony concerning, relating to or bearing upon the station in life of the petitioner prior to March 25, 1942.

MARTIN V. B. COE,
By His Attorney
SAMUEL PERMAN.

Filed: Feb. 23, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHARINE C. COE

VS.

MARTIN V. B. COE

**RESPONDENT'S AMENDED ANSWER TO AMENDED
PETITION FOR MODIFICATION**

1. The respondent denies each and every material allegation in said amended petition alleged, except the allegations contained in paragraph 1.

2. And further answering the respondent says that on or about September 19, 1942 the petitioner in the State of Nevada obtained a decree of divorce and a decree ratifying, approving and confirming a property settlement contract between the parties; that said decree was made by a

court of contempt jurisdiction, having jurisdiction of the cause and of the parties and that said decree bars the petitioner from relief in these actions.

3. And for further answer the respondent says that the petitioner and respondent entered into a written contract under seal and under oath in the State of Nevada, valid under the laws of Nevada and that said contract is a bar to the maintenance of this action.

4. And further answering the respondent says that the acts and conduct of the petitioner bar her from relief in this action, for the following reasons, to wit: That the said petitioner is predicating relief on admission of her violation of General Laws Chap. 208, Sec. 42 and that such violation bars her from equitable relief in this action.

MARTIN V. B. COE.

Filed: Feb. 26, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHARINE C. COE

VS.

MARTIN V. B. COE

MOTION TO STRIKE EVIDENCE AND TESTIMONY FROM THE RECORD

Now comes Martin V. B. Coe, respondent in the petitions for contempt and modification in the above causes, and there now being before the court an extended exemplified copy of the Nevada proceedings, together with the pertinent-applicable Nevada laws, and there being no issue of competency of the Nevada court or the jurisdiction of the Nevada court over the parties, moves that there be stricken from the record all evidence and testimony concerning, bearing or relating to the issue of the respondent's domicile in Nevada in so far as said evidence and testimony impeaches or tends to impeach the Nevada proceedings including the property settlement contract between the parties and the decree of the divorce obtained by the petitioner.

MARTIN V. B. COE,
By his attorney
SAMUEL PERMAN.

Filed: Feb. 27, 1945.

**TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE
COUNTY OF WORCESTER:**

RESPECTFULLY represents Katherine C. Coe of Worcester in the County of Worcester, that on the 22nd day of May A.D. 1943 she filed a petition against Martin V. B. Coe of said Worcester in the County of Worcester, praying the Court for reasons therein set forth to make such order as it deems expedient concerning her support and that said Martin V. B. Coe be found in contempt, that said petitions are now pending in this Court, and said husband has appeared in opposition to the allowance thereof.

Also a petition by said Martin V. B. Coe for the revocation of the decree entered March 25, 1942 with respect to separate support.

Wherefore your petitioner prays that said husband be ordered to pay into Court for her use such sum of money as may enable her to maintain and defend said petitions.

Dated this 27th day of Feb. A.D. 1945.

KATHARINE C. COE

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of May in the year of our Lord one thousand nine hundred and forty-five.

On the petition of Katharine C. Coe of Worcester, in the County of Worcester, praying that Martin V. B. Coe of Worcester in the County of Worcester, may be ordered to pay into Court for her use a sum of money sufficient to enable her to maintain petition for modification and to defend petition for revocation.

It is decreed that said husband pay into Court forthwith the sum of one thousand (\$1,000) dollars for the use of said petitioner in maintaining her petition for modification and in defending petition for revocation.

THOMAS H. STAPLETON,
Judge of Probate Court

Acting under provisions of Gen. Laws (Ter. Ed.) Chapt. 217 Sect. 8

Filed: Feb. 27, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHARINE C. COE

VS.

MARTIN V. B. COE

RESPONDENT'S MOTION FOR ENTRY OF FINDING SUSTAINING
PLEA IN BAR

Now comes Martin V. B. Coe respondent in the petitions for contempt and modification in the above causes, and there now being before the court an extended exemplified copy of the Nevada proceedings, together with the pertinent applicable laws, moves that the court sustain the Substitute Plea in Bar filed by him and assigns as causes therefor:

1. The determination of the issue of the respondent's domicile in Nevada by the Nevada court, a court of competent jurisdiction having jurisdiction over both the parties, on the pleadings and on the testimony of both parties makes the decree of divorce granted to the petitioner one which must be accorded full faith and credit under the constitution of the United States.
2. The determination of the respondent's domicile in Nevada by the Nevada Court, a court of competent jurisdiction having jurisdiction over both the parties, on the pleadings and on the testimony of both the parties makes the issue of domicile res adjudicata between the parties and the petitioner who obtained the decree of the divorce cannot re-try that issue in these proceedings.
3. The petitioner in these proceedings cannot be heard to take any position in Massachusetts on the issue of the respondent's domicile in Nevada, inconsistent with the position she took in Nevada.
4. That part of the Nevada decree ratifying, confirming and adopting the property settlement contract between the parties is entitled to full faith and credit under the Constitution of the United States and is not subject to collateral attack in Massachusetts.
5. That part of the Nevada decree ratifying, confirming and adopting the property settlement contract between the parties is res adjudicata between the parties and bars, the petitioner from relief in these proceedings.

6. The property settlement contract between the parties bars the petitioner from any relief in these proceedings.

MARTIN V. B. COE,
By his Attorney
SAMUEL PERMAN.

Filed: Feb. 27, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of May in the year of our Lord one thousand nine hundred and forty-five.

~~On the amended~~ petition of Katharine C. Coe, of said Worcester, praying that the separate support decree of this Court dated March 25, 1942, against Martin V. B. Coe be modified, upon which decree was entered on the twenty-first day of October 1943;

After rehearing, in accordance with the order of the Supreme Judicial Court, dated June 5, 1944;

IT IS ORDERED that said decree dated March 25, 1942, be modified in that said respondent, Martin V. B. Coe, shall pay to said petitioner, Katharine C. Coe, for her support the sum of five thousand (\$5,000) dollars forthwith and a further sum of one hundred (\$100) dollars each and every week, until the further order of the Court.

THOMAS H. STAPLETON,
Judge of Probate Court.

Acting under provisions of Gen. Laws (Ter. Ed.) Chapt. 217 Sect. 8

Filed: May 21, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of May in the year of our Lord one thousand nine hundred and forty-five.

On the petition of Martin V. B. Coe, of said Worcester, praying that the Court adjudge that he and Katharine C. Coe are no longer husband and wife, and for further relief, upon which decree was entered on the twenty-first day of October 1943;

After rehearing, in accordance with the order of the Supreme Judicial Court, dated June 5, 1944;

It is ordered that the petition for revocation of decree of March 25, 1942, be and the same is hereby dismissed.

THOMAS H. STAPLETON,
Judge of Probate Court.

Acting under provisions of Gen. Laws (Ter. Ed.) Chapt. 217 Sect. 8.

Filed: May 21, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

At a Probate Court holden at Worcester, in and for said County of Worcester, on the twenty-first day of May in the year of our Lord one thousand nine hundred and forty-five.

On the petition of Katharine C. Coe, of Worcester in said County, praying that her husband Martin V. B. Coe of said Worcester may be adjudged in contempt of said Court for his failure to obey the decree of said Court made on the twenty-fifth day of March 1942, in proceedings for separate support brought by the petitioner against him.

After rehearing in accordance with the order of the Supreme Judicial Court dated June 5, 1944;

IT IS ORDERED that said petition be and the same is hereby dismissed.

THOMAS H. STAPLETON,
Judge of Probate Court.

Acting under provisions of Gen. Laws (Ter. Ed.) Chapt. 217, Sect. 8.

Filed: May 21, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

MARTIN V. B. COE

VS.

KATHERINE C. COE

REQUEST FOR REPORT OF MATERIAL FACTS

In the above entitled causes it is hereby requested, pursuant to the provisions of Gen. Laws (Ter. Ed.) Ch. 215, Sec. 11, that the Court report the material facts found by him in connection with all orders, decrees or denials made by him.

MARTIN V. B. COE,

By his Attorneys

SAMUEL PERMAN.

VAUGHAN, ESTY, CLARK & CROTTI.

Filed: May 25, 1945.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

RESPECTFULLY represents Katherine C. Coe and respectfully requests that the Court make a report of all the material facts found by the Court in accordance with General Laws (Ter. Ed.) Chap. 215, Sec. 11.

KATHERINE C. COE,

By her Attorneys

NUNZIATO FUSARO,

FRANCIS P. McKEON.

Filed: May 25, 1945.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

Represents Martin V. B. Coe, that he is aggrieved by decrees of the Probate Court held at Worcester, in said County of Worcester, on the twenty-first day of May A.D. 1945, whereby said Court

(1) Modified a decree for the support of Katherine C. Coe awarding her \$35.00 a week by ordering the payment of \$5,000 worthwith and \$100 a week.

(2) Allowed a petition for counsel fees on behalf of Katherine C. Coe by decree of the payment of \$1000 forthwith.

(3) Dismissed the petition of Martin V. B. Coe for the revocation of the decree of March 25, 1942.

And he hereby gives notice that he claims an appeal from said decrees to the Supreme Judicial Court.

Dated this 26th day of May A.D. 1945.

MARTIN V. B. COE.

Filed: May 31, 1945.

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF WORCESTER:

Represents Katharine C. Coe of Worcester in the County of Worcester, that she is a party interested in case 131205, that she is aggrieved by decrees of the Probate Court held at Worcester, in said County of Worcester, on the 21st day of May A.D. 1945, whereby said Court dismissed her petition for contempt, and allowed in part her petition for an increased allowance.

And she hereby gives notice that she claims an appeal from said decrees to the Supreme Judicial Court.

Dated this 7th day of June A.D. 1945.

**KATHERINE C. COE,
By her Attorneys
NUNZIATO FUSARO,
FRANCIS P. MCKEON.**

Filed: June 7, 1945.

COMMONWEALTH OF MASSACHUSETTS

PROBATE COURT

WORCESTER COUNTY

No. 181206

COE

VS.

COE

ORDER FOR PREPARATION OF PAPERS AND COPIES
FOR THE FULL COURT

To F. JOSEPH DONOHUE, ESQ., Register,
Probate Court for the County of Worcester,
Worcester, Massachusetts:

In the above-entitled action the appellant Martin V. B. Coe hereby gives an order in writing for the preparation of such papers and copies of papers as are specified under General Laws (Ter. Ed), chapter 231, section 135, for transmission to the Full Court of the Supreme Judicial Court.

By SAMUEL PERMAN,
Attorney.

Address, 332 Main Street,
Worcester, Massachusetts

[Date] May 26, 1945.

Filed: May 31, 1945.

COMMONWEALTH OF MASSACHUSETTS

PROBATE COURT

WORCESTER COUNTY

No. 181206

COE

VS.

COE

ORDER FOR PREPARATION OF PAPERS AND COPIES
FOR THE FULL COURT

To F. JOSEPH DONOHUE, ESQ., Register,
Probate Court for the County of Worcester,
Worcester, Massachusetts:

In the above-entitled action the appellant Katharine C. Coe hereby gives an order in writing for the preparation of such papers and copies of

papers as are specified under General Laws (Ter. Ed.), chapter 231, section 135, for transmission to the Full Court of the Supreme Judicial Court.

NUNZIATO FUSARO,
By FRANCIS P. McKEON,
Attorneys.

Address, 390 Main Street,
Worcester, Massachusetts.

[Date] June 11, 1945.

Filed: June 11, 1945.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

vs.

MARTIN VAN BUREN COE

REPORT OF MATERIAL FACTS

This is a report of the material facts found by me in the above-entitled case and made under the provisions of G. L. (Ter. Ed.) C. 215, S. 11.

This case has been before the Supreme Judicial Court in Coe vs. Coe 313 Mass. 232 and Coe v. Coe 316 Mass. 423.

There were before me for hearing, a petition brought by the wife, asking that the respondent be adjudged in contempt for failure to make payments as ordered by a decree for Separate Support; a petition by the wife, for Modification of the Separate Support decree; and a petition by the respondent in the Separate Support action, praying:

1. "That this Honorable Court adjudge that your petitioner and the said Katherine C. Coe are no longer husband and wife."
2. "That the petition against him for contempt be dismissed."
3. "For such other and further relief as this Honorable Court deems equitable in the premises.", and a petition for Counsel Fees brought by the wife, Katherine C. Coe.

I heard the cases in accordance with the order of the Supreme Judicial Court in Coe v. Coe 316 Mass. 423.

The parties were married in New York, N. Y., either May 15, 1934 or

May 16, 1934. At the time of the marriage both were residents of and domiciled in Worcester, in the Commonwealth of Massachusetts. Katherine C. Coe, the wife, was born in New York City; removed to Manchester, N. H., when 12 years of age and removed to Worcester in this Commonwealth in 1927. Soon thereafter she met Martin Van Buren Coe, the husband. Mr. Coe was born in Worcester, Massachusetts and continued to reside in Worcester.

After the marriage the parties resided and lived together as husband and wife at 6 Boynton Street, in said Worcester, until the early part of 1942. In 1940, the respondent husband leased an apartment in New York City. I find that he did not thereby acquire a domicile or residence in New York, separate and apart from his domicile in Worcester, Massachusetts.

During the early years of the marriage, from 1934 to 1939, the parties traveled extensively. They went to California, Florida, Nassau, in the winter-time, and the New Hampshire mountains and Cape Cod, in the summer, and lived at fashionable hotels. The respondent owned a thirty-five thousand dollar yacht and several riding horses. The petitioner, wife, had "Charge" accounts in stores in New York City, Boston and Worcester.

This mode of living and this friendly relationship of husband and wife began to change in 1939. About that time the respondent husband began an intimate friendship with one Dawn Allen, who figures largely in the case, and who was, to a large measure, the cause of the trouble between the petitioner wife and the respondent husband.

On January 13, 1942, the wife filed a petition for separate support in the Probate Court for the County of Worcester. The husband filed a libel for divorce which was dismissed, after hearing, on March 25, 1942.

The petition for Separate Support and the respondent's libel for divorce were heard together in March 1942 and on March 25, 1942, a decree was entered on the Separate Support petition ordering the respondent Mr. Coe to pay his wife "The sum of thirty-five dollars forthwith and the further sum of thirty-five dollars each and every week hereafter until the further order of the Court." This decree was affirmed by the Supreme Judicial Court on February 23, 1943. Coe vs. Coe 313 Mass. 232.

Sometime in May, 1942, the respondent husband left Worcester and went to New York City. He left New York City in the company of Dawn Allen, and arrived in Reno, Nevada on June 10, 1942. On June 11, 1942,

the respondent Coe went to the office of one Alan Bible, an attorney-at-law, in Reno and consulted with him with reference to a divorce from his wife Katherine C. Coe. On July 24, 1942, he swore to an "Affidavit for Publication and Summons" and filed his action for divorce on July 27, 1942 in the First Judicial District Court of the State of Nevada in and for the County of Ormsby.

Service of the summons was made upon the petitioner at Worcester, Mass. She left Worcester and arrived in Reno, Nevada, August 25, 1942. She went to the El Cortez Hotel for a few days and then took a room at 128 Liberty Street, Reno, Nevada. She had never been in the State of Nevada before. She went to Nevada for the purpose of defending herself against her husband's action for divorce and also to obtain a divorce. This while she was still a resident of, and domiciled in, Massachusetts. I find that she went to Nevada to obtain a divorce for a cause which occurred in Massachusetts while the parties resided in Massachusetts.

Mrs. Coe consulted a Mr. Edwards, a lawyer in Reno, Nevada. On August 28, 1942, he filed a demurrer to the action of her husband. On September 19, 1942, Edwards filed, on behalf of Mrs. Coe, an answer to her husband's action and a cross complaint. On September 19, 1942, at Carson City, in the State of Nevada, in the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, a decree was entered on the wife's cross complaint as follows:

"It is therefore ordered, adjudged and decreed that the defendant have and she is hereby awarded judgment against the plaintiff forever dissolving the contract of marriage and bonds of matrimony, now and heretofore existing between them and restoring both parties to the status of unmarried persons." In addition, the decree recites: "It is further ordered that the written agreement entered into by the plaintiff and defendant herein on the 16th day of September, 1942, be and the same is hereby ratified, approved and confirmed, and adopted by the Court as a part of its judgment herein, and each of the parties is hereby ordered and directed to comply with the terms thereof."

A copy of the agreement is attached and made a part of these findings.

In accordance with the terms of the agreement, Katherine C Coe received the sum of seven thousand five hundred dollars, (\$7500.).

Edwards, the attorney for Mrs. Coe was paid the sum of one thousand dollars (\$1000.) by Mr. Coe. The agreement called for payments of thirty-five dollars (\$35.) per week or \$1820. per year to be made by Mr. Coe to Mrs. Coe during her lifetime and while she remained single. No payments of thirty-five dollars (\$35.) per week were ever made. Mrs. Coe received two payments of thirty-five dollars (\$35.) after September 19, 1942, but these were payments due prior to September 19, 1942 on the Separate Support decree of March 25, 1942.

In considering the contempt petition, I credited the respondent with the payment of seventy-five hundred dollars (\$7500.) and concluded that it would be inequitable to hold him in contempt. I took into consideration the payment of seventy-five hundred dollars in reaching a decision on the petition for modification.

The petitioner, Mrs. Coe asked me, through her attorneys, to find fraud and bad faith on the part of her attorney, Mr. Edwards, who represented her in Nevada. The burden of proof being upon her, upon all the evidence, I am unable to so find. However, she was in a part of the country far from home, among strangers and engaged in a legal controversy with her husband who was trying to get rid of her and all responsibility for her support. He had ample funds to fight with and she had nothing. She was advised that the Judge who was to hear the case always granted a divorce. Influenced by these circumstances, she accepted a bad bargain and was overreached by the superior financial power of her husband.

In accordance with the opinion in *Wilson vs. Caswell*, 272 Mass. 297, I did not consider the contract a bar to action by the Court to revise and alter the decree of March 25, 1942, for Separate Support.

Immediately after the divorce hearing, Martin Van Buren Coe went through a marriage ceremony with Dawn Allen, known during the trial as Mrs. Coe, number two. The ceremony was performed by the same Judge who granted the decree to Katherine C. Coe.

The respondent, Mr. Coe made many conflicting statements in regard to residence and domicile and to many other facts. He contradicted himself many times concerning important issues. During his testimony he looked to Dawn Allen for a signal or sign before answering. He gave false testimony. He attempted to hide his wealth. He gave so much contradictory and false testimony that I placed no reliance on his figures in

regard to his income. At times I found it difficult to follow which statement he wished me to believe. He made conflicting statements in regard to his residence in Massachusetts, New York and Nevada. I find on all the evidence that the respondent Coe, never intended to change his residence from Massachusetts. I find that his claim of residence in Nevada was a fraud. I find that he left the State of Nevada on July 18, 1942 to visit Dawn Allen at Lake Tahoe, in California. This is one of the statements he made in regard to residence and later changed, stating on the second occasion that it was August 27, 1942 that he visited Dawn Allen at Lake Tahoe, but I find that when he made the first statement he inadvertently told the truth.

It was difficult to find the exact net worth of the respondent Coe, and I am not satisfied that I did find his exact net worth or his income. He was asked to bring in books and bank statements and records of corporations which he admitted owning, but he neglected to do so. He stated he was "not as well off in 1942 as in 1941, not as well off in 1943 as in 1941, not as well off in 1944 as in 1941. He gave his gross income in 1939 as \$11,000., 1940 as \$10,000., 1941 as \$8,500., 1942 as \$7,800 and 1943 as \$8,000. I find this testimony to be false. During a period of about three years ending in 1933, he received in money and securities over \$600,000.00. When pressed to show losses or gains, he neglected to do so, except that he claimed a loss through ownership of certain Japanese bonds which would now be of little value. Any loss by reason of the ownership of these bonds is negligible compared to the total wealth of the respondent, and I find from all the evidence that he, or the corporations which he owns, hold substantially all the same securities. Taking into consideration the greatly increased value of securities since 1933, his failure to show losses or depreciation when asked to do so, and his conduct on the witness stand, I find there is a strong inference that this respondent is worth many times \$600,000.00. However, to eliminate any element of speculation, I based my order on a finding of net worth of not less than \$600,000.00, in considering his ability to make payment as having a bearing on the amount of the order.

The respondent Coe testified that an incident happened in New York on April 14, 1942 between Katherine C. Coe and himself and that Katherine C. Coe made a threat that "If I see you with another woman, I will kill

you." He testified that he intended to base his divorce in Nevada "on the New York incident". I find that no such incident occurred. I find that Katherine C. Coe was not in New York on the day testified to by Mr. Coe or on any other day in April, 1942. I find that his testimony with reference to this incident was false. I find that the petitioner and respondent never lived together as husband and wife after the decree of Separate Support in the Worcester Probate Court of March 25, 1942, and no incident occurred in New York, Massachusetts, or elsewhere on which the respondent Coe could base a cause for divorce. His story of an incident happening in New York was an invention to avoid the consequences of the provisions of G. L. (Ter. Ed.), C. 208, S. 39.

I find that the respondent, Mr. Coe went to Nevada to seek a divorce. (Page 43, Vol. 1 of transcript of evidence.) I find he had no grounds for a divorce on any incident that happened in Massachusetts or elsewhere. I find that neither he nor Mrs. Katherine C. Coe had a bona fide residence in Nevada according to the law of Nevada. I find that the Nevada Court did not have jurisdiction of either party. I find that the divorce was in violation of the provisions of G. L. (Ter. Ed.), C. 208, S. 39.

Shortly after the divorce in Nevada, both parties returned to Worcester, Massachusetts, and have since resided in Worcester. The respondent, Mr. Coe has bought a new home in Worcester, subsequent to his return from Nevada. Both parties have made short visits outside the state. I find that both parties are now residents of Massachusetts.

I find the parties are husband and wife in Massachusetts.

The physical condition of the petitioner, Katherine C. Coe has changed greatly since the separation and since the decree of Separate Support. She is now suffering from a serious heart ailment; a coronary occlusion, a systolic murmur at the apex and dyspnoea on exercise. Her condition is getting worse. She has generalized myocarditis, a general weakness of the heart muscle and mitral regurgitation. Mitral regurgitation is a condition caused by a leaky valve of the heart. Her condition is not curable. She is unable to do any kind of work. Her condition began to change in the fall of 1942, immediately after her return from Nevada. I find that the payments under the order for Separate Support should be revised as of a date about October 1, 1942. I based the increase in the order for payments under the Separate Support decree on the inability of the peti-

tioner Mrs. Coe, to support herself; her need of assistance in performing any simple task or household duty; her need of medical attention and the known increased cost of living, and the ability of Mr. Coe to make payments.

In the matter of the order for payment of counsel fees, I find that there were hearings before me on July 10, 1944, on February 5, 6, 7, 8, 9, 19, 20, 21, 23, 26, 27 of 1945. There were arguments before Judge Wahlstrom on January 12, 1945. There were important questions of law involved. The respondent and his counsel by attempts to obstruct the trial placed a greater burden upon counsel for the petitioner. The respondent testified that he paid one of his counsel five thousand dollars. Counsel for the petitioner performed their duties with great care and with great skill.

THOMAS H. STAPLETON,
Judge of Probate Court.

July 2, 1945.

Filed: July 5, 1945.

Acting under provisions of Chap 217, Sec. 8, G. L. (Tcr. Ed.)

Filed: July 2, 1945

[Agreement between Martin V. B. Coe and Katherine C. Coe dated September 16, 1942, and attached to the original report of material facts is not printed here as the same appears in another part of this record]

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

KATHARINE C. COE

VS.

MARTIN V. B. COE

HEARING JULY 10, 1944, BEFORE JUDGE STAPLETON

APPEARANCES:—

FRANCIS P. McKEON, Esquire — for MRS. COE

SAMUEL PERMAN, Esquire — for MR. COE

THE COURT: I am a little at a loss reading the material facts. "On September 20, 1943, the petitioner filed a demurrer to the petitioner's motion for petition which is entitled Petition for Revocation." Does that mean respondent?

MR. PERMAN: Yes.

MR. McKEON: I am inclined to think not, Your Honor.

MR. PERMAN: That, Your Honor, should be respondent, "Petitioner filed a demurrer to the respondent's motion."

MR. McKEON: I think that is correct.

THE COURT: A demurrer to the respondent's motion—you both agree that that is correct?

MR. PERMAN: Yes.

MR. McKEON: Yes.

THE COURT: I won't attempt to make any correction on that.

MR. PERMAN: That is a typographical error.

THE COURT: How was it on the record that went up?

MR. McKEON: Just the same.

MR. PERMAN: "Petitioner" should have been "respondent." I might suggest Your Honor might sometime look through the record. I think that probably would contain in detail everything that went up to the Supreme Court.

THE COURT: I certainly will. But this is only to get my bearings

to what this is about. (Court looks over printed sheets). Perhaps you could enlighten me as to just what is before the Court this morning. The whole matter or—

MR. MCKEON: Let me briefly suggest what I think is a good plan. Personally I think there are two petitions by the petitioner: One, a petition to adjudge the respondent in contempt for non compliance with the decree entered March 25, 1942; and the other, a petition for an increased allowance based on that same decree. There is also a petition by the respondent to modify that same decree. In substance, it is our contention that isn't a petition to vacate but a petition to modify. There is also respondent's motion to file a substituted plea in bar to the petition for contempt, and an amended petition for modification. There is a respondent's motion to amend his answer to the petition for modification; a respondent's motion to be allowed to demur to the petition as amended petition for modification; respondent's motion for specification, and a form of demurrer by respondent to amend the petition for modification. I suggest first that it is standard practice not to permit any party to try the issues of facts on the merits twice; and therefore that the motion to file a plea in bar be denied, or if allowed that it be at once over-ruled. He raised the same issues in his answer; I believe they do raise the same issues. Whether they do or not, I suggest one only at bar—

THE COURT: As I understand, you suggest—

MR. MCKEON: That the plea in bar be over-ruled. If it is allowed, I suggest, Your Honor, it be at once over-ruled. But following this very same in the answer, even apart from the fact that this case has twice been in full Court, the parties now seem to be entitled to complete record of final adjudication of their rights. The question of the validity of the divorce in the bar should not be twice raised—once in the plea in bar and once again in the answer. There will be the same facts and same issues.

THE COURT: Well, it certainly should not be tried twice.

MR. MCKEON: That's right.

MR. PERMAN: There is a plea in bar specially raising the matter as a preliminary issue. Your Honor understands that this already has been previously tried before Mr. Justice Wahlstrom, and I think, in specific answer to your queries as to what was before your Honor this

morning, I should suggest that what is before Your Honor this morning is this: Certain interlocutory matters designed specifically to properly present this cause so far as the pleadings are concerned. If your Honor will examine the record Your Honor will find that on the day the decrees were entered on the petition for modification and petition for contempt and petition for revocation, there was an amended petition filed In order to properly present this cause to Your Honor it occurred to me that the pleadings ought to be in order. Now there was a plea in bar to the original petition for modification. That was amended, and there was nothing filed so far as that amended There was also urged as an objection originally to the plea in bar that was originally filed that it contained two separate decrees that were not related to each other; and that was one of the grounds of argument urged by the petitioner before the Supreme Judicial Court. To avoid that objection, so that there would be no technical matter involved, I have in my motion to amend the plea in bar merely set up as a preliminary defense the Nevada proceedings. I haven't set out the other ground for defense alleged in the original petition for modification, which I think goes far towards avoiding any technical objections to that plea. Then I have filed—

THE COURT: Let me interrupt at this time and ask you this question: There isn't any doubt in your mind is there, that you could raise the same question in your answer as in your bill? Having in mind this, now it is my understanding that it is the law of this Commonwealth that divorce proceedings, if in the Superior Court, are on the law side, and if in the Probate Court are in the equity side.

MR. PERMAN: No doubt about that. That is a correct statement of the law, as I understand it.

THE COURT: Now that being so, doesn't it necessarily follow that any matter in bar you may set up in your answer?

MR. PERMAN: I suppose it is true that an affirmative defense may be set up by way of answer as well as by way of plea in bar.

THE COURT: I suppose this is really a separate support case?

MR. McKEON: That is right.

THE COURT: Not divorce?

MR. PERMAN: This is not divorce.

MR. McKEON: That is right.

THE COURT: I just happened to think of that. Having in mind the Nevada divorce—

MR. MCKEON: That being true, we are still on the equity side.

THE COURT: We are still on the equity side?

MR. MCKEON: Yes.

MR. PERMAN: Although I don't suppose that any action for separate support would lie on the law side of the Court. I assume we are still on the equity side.

THE COURT: I think so.

MR. PERMAN: My thought in connection with that plea in bar originally filed and with the plea in bar which we have filed now was to specifically raise by way or preliminary matter, as it was done in the original instance, certain affirmative defense which made the effect of the Nevada proceedings a very material part of these proceedings.

THE COURT: I think Mr. McKeon was merely attempting to suggest a manner of simplifying it, simplifying the proceedings rather than to eliminate your plea in bar. It wouldn't have the same force and effect as—

MR. PERMAN: No, and it is precisely why I have the plea in bar in mind and why I urge that the Court give the matter of the plea in bar some thought. So far as the answer is concerned, it is going to involve a number of issues that might not be reached if the allegations of the plea in bar are sustained.

THE COURT: While I do not agree with you on that, however, I am going to say if you insist upon it, I am going to allow it.

MR. PERMAN: This is the plea in bar.

MR. MCKEON: Before you finally decide it, may I say a word? I understand the full Court to say that no respondent is entitled or has the right to two trials on the same issues. The validity of this Nevada divorce is raised in the plea in bar, and it is raised also and the practice at least recommended by the Court to set the plea in bar aside was the very same issue to be raised in the answer. Otherwise, having been up there twice, it is conceivable we might go up a third time and still not have an adjudication of all the rights of these parties. So that I think your Honor ought to consider whether it isn't depriving the petitioner of a full hearing on all the facts to hear as a preliminary matter the validity of that Nevada divorce when it can be admitted and is raised in

the answer. We would like very much to have a complete record here in the event of an appeal by either side, so that it will not involve endless litigation in order to get a final determination of what is the status of the parties and their rights. It would make no difference in the actual course of trial if the plea in bar were over-ruled after hearing. We would then go on to hear the insofar as matters of the plea in bar are already taken care of. So with all moral proceedings it would be highly desirable that the petitioner be allowed to present her own case and the respondent be now allowed or compelled to present his own case. . . . and to which I made suggestion even if the plea in bar were tested as to its facts and its facts found in support of the plea in bar, it is then my opinion as a matter of law there wouldn't be a bar in this petition. If we can establish that right off, that this much we do know, that this was a valid divorce in Nevada, there would still be the question whether it would be valid here; and the plea in bar doesn't reach to that point, as I read it. But even assuming it did, the respondent has already had the advantage of that plea in bar. He opened his case and rested. The petitioner was then denied the right to come back in the respondent's case on the plea in bar, which was the cause of the last appeal to the full Court. So that I hope very strongly we won't get into a similar situation again where the case would not be fully adjudicated.

THE COURT: Well I may say, Mr. McKeon, I would like to follow your suggestion and hear the whole case and let the whole matter be determined. If it goes up, why all the matters go up, so that there will be complete adjudication; one hearing before the Supreme Judicial Court. That is what I had in mind.

MR. PERMAN: May I point out, if Your Honor please, so far as the amended plea in bar is concerned, if that is not allowed we go right back to where we started from on the original. In connection with the original plea in bar, it avers that it was defective in that it contained two defenses that were not related to each other.

MR. McKEON: I agree that that is so.

MR. PERMAN: Now there is some question about that, and rather than have a record, if Your Honor please, where there might be some question as to the plea in bar, because it is before the Court anyway, it was my thought that that defect ought to be cured by raising specifically

the effect of the Nevada proceedings here. Your Honor will note that there is a reference to a decree of this Court, Supreme Judicial, as to the plea in bar. There are two separate defenses and Now there is not involved any question of two trials here. If the plea in bar is overruled, obviously the case proceeds to whatever merits it has. If the plea in bar is sustained, the petitioner has no right to go forward. I fail to see, Your Honor, any prejudice involved here, but I do think that the record ought to be clarified to remove the technical objection to the original plea in bar.

MR. MCKEON: Well, I thought I had already said I had no objection to removing the technical objection, if there is one. I modified what I said to take care of that technical objection, and I say the motion to amend the plea should be allowed. If it should be removed then the very same thing that is raised in that answer is tried. In the case of I think Chief Justice Rugg wrote the opinion and said no one has a right to raise the same thing twice and to have two hearings on it. I think it is quite apparent that the practical motive of the respondent is to avoid a full and complete adjudication of all the facts of law involved. It positively loses nothing by raising it in his answer to which he is entitled. It makes progress in the case, and the other method will not. Even suppose, as my friend suggested, the plea was sustained. That is what happened the last time, and the Court says that is wrong, and I came back again. The way to avoid any further trial here seems to me quite clear—that the respondent rest everything on issues he raises, but do it in his answer.

THE COURT: Well, Mr. McKeon, if the respondent insists on proceedings on this motion, I am going to permit him to do so; although I still say I would rather proceed as you have suggested.

MR. MCKEON: Well, may I suggest the reading of that opinion in the case; not a trial on the plea in bar which might well be ordered, but on If it turns out as I expect, we will really have lost nothing. But I am trying if possible to retain the right and the opportunity to present the petitioner's full case. I shall, if permitted to do so, immediately attack the validity of the Nevada divorce.

THE COURT: Well, isn't that open to you on the plea in bar, and isn't that what the Supreme Court had in mind? Let me read: "In the case at bar it was important to know whether the Nevada Court had

jurisdiction and whether the statute (Gen'l. Laws, Ter., Chap. 208, Sec. 39) had been violated."

MR. McKEON: That is right. Of course we had no case.

THE COURT: "The answers to these questions cannot be ascertained from the record because the petitioner was denied the right, which I think was an error, to introduce evidence with respect to them."

MR. McKEON: That is correct.

THE COURT: Now it is my purpose, if I go on to a hearing on this plea, to permit you to introduce all competent evidence to show that the Nevada Court did or did not have jurisdiction, and also to show by all competent evidence whether or not there was a violation of Chapter 208, Section 39.

MR. McKEON: Well, either way, of course, will work. It appears to me—

THE COURT: May I interrupt just a little bit further. Suppose we start out with that in mind. You would then have my opinion and my decision on those two points. If I decide that the Nevada Court did have jurisdiction and that Chapter 208, Section 39, had not been violated, then it would be my duty to sustain the plea in bar.

MR. McKEON: That is correct. Then we wouldn't have a full trial and theoretically it might come back again.

THE COURT: On your petition for modification, it might come back again. I had that in mind when I said I would rather proceed as you have suggested. But if Mr. Perman insists on hearing on this, I am inclined to think that I should proceed in that manner, although I would rather not.

MR. McKEON: I'm not certain of this, but as I see his objection it is this: That if you over-rule that plea in bar If you say: "I rule that the respondent as a matter of right can present his plea in bar," then I would have to ask you to save my rights. If you say as a matter of discretion you will allow it, of course we accept it. As I understand the opinions—

THE COURT: Well, I think coming at this time it is a discretionary matter in any event.

MR. McKEON: If you act on that, that is all right.

THE COURT: I am inclined to think if this was the plea filed at the

outset, he could proceed on it as a matter of right; but coming now—

MR. McKEON: I don't understand so, if he raises the same thing in his answer; he can't do it twice.

THE COURT: Have you already raised the same question in your answer?

MR. PERMAN: There is no answer filed. I am going to submit an answer to Your Honor as well. Perhaps Your Honor might—

THE COURT: Well, there is something to what Mr. McKeon says on that, because you then have a right to a hearing on the same question twice.

MR. PERMAN: No, it is all in the same hearing, if Your Honor please. What Mr. McKeon means by a double hearing is in the event the plea in bar is sustained.

THE COURT: May I see your answer? (Mr. Perman hands paper to Court).

MR. PERMAN: And there is also a demurrer, a motion for a demurrer—

THE COURT: Perhaps I didn't catch you at first. I didn't know there was an answer filed.

MR. McKEON: Actually there isn't, but there is a motion to file.

THE COURT: There is a motion to file one?

MR. McKEON: Both, that's right.

THE COURT: (After looking at papers handed him) Well, Mr. Perman, I didn't know that this answer was filed with a motion; that is, that there was a motion for permission to file this answer and also you are asking for permission to file this plea in bar. You cannot have both of them.

MR. PERMAN: Your Honor is aware the plea in bar already filed is in that record, and it is that plea in bar I am seeking to correct so there wouldn't be any objection to this. I didn't want to go into the merits of this defense, but there is a pretty sound reason why I want to have this determined as a preliminary matter. Your Honor is aware there is a decree concerning the decree entered March 1942. Your Honor has that in mind. Your Honor has in mind that on September 19th of 1942 this petitioner received the sum of \$7500.00. Your Honor is aware under the pleadings the petitioner raises no question as to the receipt

of the \$35 weekly under the original petition for separate support up until September 19, 1942. If Your Honor will take and make a simple mathematical computation, you will find that even apart from the question of the validity of the Nevada proceedings \$7500 at the rate of \$35 per week does not and could not create any contempt; and that is apart from the question as to whether the proceedings in Nevada are valid now. If Your Honor will look at the petition for modification, Your Honor will find that although a determination was made preliminary back in 1941 where all the evidence as to the respondent's financial position, his assets and what not, was introduced in evidence, although in March of 1942 a hearing was had—

THE COURT: May I help you a bit? I interrupt solely for that purpose. Don't think that I am considering it at all on its merits.

MR. PERMAN: I didn't think Your Honor did; but I do say this—

THE COURT: Don't think that that influences me.

MR. PERMAN: I appreciate that, but I want Your Honor to understand precisely why I urged the plea in bar. There is a difference and, as I say, it is difficult for me to explain my position without going into the superficial merits anyway, and I'm not going into anything that is beyond the record here. But there was a full hearing had as to what this woman was entitled to by way of separate maintenance. As a matter of fact, there was a hearing involving some nine or ten trial days. It was adjudicated. It went up to the Supreme Judicial Court. It was affirmed. Now on a petition for modification where the decree was entered, and having in mind it was entered in March of 1942, a petition for modification was filed in the early part of 1943 wherein it is sought to have a decree for modification based upon the respondent's financial ability to pay. That is why I filed my demurrer here. This thing was already adjudicated. Twice hearings were had on the preliminary award; full and complete hearing was had before Mr. Justice Wahlstrom. The petitioner was dissatisfied with that. She went up to the Supreme Judicial Court after having a full and complete hearing, and an attempt is now sought before Your Honor to have that entire thing reopened on petition for modification, which I say amounts to what? Proceedings to harass and annoy. That's the only value it has.

THE COURT: It could be; but not necessarily. Because it might well

be that, I don't know of course, but it might well be that the respondent has a much larger income now and it might be that the circumstances of the petitioner have changed. I don't know.

MR. PERMAN: That is right; but it cannot be determined that way.

THE COURT: It might well be that living conditions have changed since then.

MR. PERMAN: That is right; but there is no such statement in the petition for modification.

THE COURT: In spite of the Price Control Act.

MR. PERMAN: That's right. But Your Honor understands why, or might have some idea as to why I want to avoid having my client harrassed as much as I possibly can. We have been in litigation here for, Oh, something like four years. It is my duty, if Your Honor please, if I can sustain the allegations of the plea in bar not to subject my client to any unnecessary further proceedings. Whatever may be the extraordinary ups and down of living expenses, and whatever may be the extraordinary fluctuations that may arise at or between March 1942 and January of 1943, it seems difficult to say on any ground that after receiving \$7500.00 that change between those two dates was so great as to warrant the sustaining of any modification. Your Honor has in mind that \$7500.00 was paid over in September of 1942 and these proceedings were instituted the early part of 1943.

THE COURT: Now I will hear you on that. I will accept that only as bearing upon your reasons for insisting upon your plea in bar. Do you understand me?

MR. PERMAN: Yes, Your Honor.

THE COURT: I am listening to and considering those statements as bearing only upon your reasons for insisting on your rights.

MR. PERMAN: Those are some. I haven't attempted to cover the complete ground, Your Honor. There will be some we will actually offer on the record that can be substantiated by its appearing on the record. And I don't think at this time I ought to go beyond the record as to other matters.

MR. MCKEON: If Your Honor please, we are apparently agreed on the duty to procure an expeditious trial. We interpret it actually differently. To repeat, I interpret it to mean we get a full and complete adju-

dication of all facts between parties. To clarify my position and make it a little more clear and a little more strong, it is the petitioner's contention that, this is a matter of law, he is not entitled to He can elect one, or the other; but as a matter of fact he cannot raise the same issue twice. If he is content to try his whole case on the plea in bar, the petitioner has no objection. But the petitioner decidedly objects to giving the respondent a right to trial on the validity of the divorce and plea in bar and a right to try the validity of the divorce on the same facts in his answer.

THE COURT: Well, I think that is sound.

MR. MCKEON: I am not trying to evade any issue here; I am trying to meet it and to do it in a way that will end it.

THE COURT: Are you content, Mr. Perman, if I proceed on your amended plea in bar that I will then not permit you to file this answer?

MR. PERMAN: What I have in mind, if Your Honor please, is this: I think Your Honor ought to accept both; that we ought to proceed first with reference to determining what the standing of this petition is with reference to the Nevada proceedings. Then if there is any question in your mind as to the right to proceed, if Your Honor especially feels that she has a right to proceed or should proceed, we could then proceed on. Nobody is harmed, and the proper rights are saved. If, as a matter of law, Your Honor feels when the evidence is in that the petitioner has sustained her position that there was no—

THE COURT: Just a moment. If I proceed on your plea in bar, and if after a hearing I over-rule it and went on to a hearing that the Nevada proceedings are not a bar to this pending proceedings for modification of the separate support, I would of course permit you to show what she received at the Nevada divorce, as to whether or not it was adequate support. It is evident if I exceeded that it wouldn't be fair nor proper.

MR. PERMAN: What I had in mind was this: If Your Honor should find upon further hearing with reference to the Nevada proceedings that this petitioner is entitled to go ahead, I would then be willing to proceed on the other issues involved and would then have my rights fully saved with reference to plea in bar. If it then did go up to the Supreme Judicial, the whole thing would go up. I would have no objection if Your Honor saw fit—and if there was any question in Your Honor's mind I say this

now: If after hearing the evidence with reference to the Nevada proceedings, which of course would include everything that the parties did out there, and wanted to reserve an opinion as to what Your Honor would do with reference to the plea in bar, and then wanted to hear what the petitioner had by way of contempt under the circumstances or by way of modification, competent evidence as to modification, I would have no objection to that procedure. But I do think I ought to be permitted to have my right saved. I think if Your Honor is satisfied beyond any question—and I don't think Your Honor would make a ruling unless Your Honor was completely satisfied—if after hearing all the evidence with respect to the Nevada proceedings Your Honor is then of the opinion that he ought not to be heard any further, I think those rights ought to be established.

THE COURT: I think so; and I think Mr. McKeon agrees with you on that.

MR. PERMAN: That being so, there doesn't appear to be any objection to the filing of the plea in bar, which only isolates the Nevada proceedings; and the answer which of course is required to be filed on the same, the pleadings and whatever additional issues are raised. I don't see as anybody is harmed here.

MR. MCKEON: We are already harmed by constant trials; we don't want to be harmed again, if we can avoid it. Let me state some of the facts here which have not yet been presented to Your Honor. The major date in my book to be kept in mind is: March 25, 1942. On that date this Court made two decrees—one in favor of the petitioner, one against the respondent. The respondent had filed a divorce and had alleged originally cruel and abusive treatment by the present petitioner. The petitioner had filed this petition for separate support. In his answer the respondent claims that the petitioner has been guilty of cruel and abusive treatment. Those cases were heard at the same time. The respondent's application for divorce was denied. After it had been amended to include, besides cruel and abusive treatment, the charge of adultery. That decree of course is final. The decree on the petition for separate support also was filed. And that was on March 25, 1942. The petitioner appealed on one issue, namely, the question of allowance, the amount of the award, which of course is a question of fact and a question of discretion, and

very unlikely to succeed on appeal. Nevertheless, the decree was affirmed only by a majority opinion. The respondent had no appeal, so that the merits of that case are not in issue and not removed to the Supreme Judicial Court, and in the face of final adjudication against the respondent as to cruel and abusive treatment and desertion, he went out to Nevada in the following July and filed a complaint for divorce, alleging the two causes which had become adjudicated by the decrees of this Court. Later the petitioner went out, and not opening up the facts but . . . decree in her favor. It is unquestionable in point of fact that that Court had no jurisdiction unless it took it through him, because she had no domicile, no residence or anything to gain that Court's jurisdiction. If we are correct in that contention, it saves a great deal of discussion as to what did or did not happen in Nevada. It is important to get that determined, we think, at the very outset, and if we have the right to opening and closing that petition we can raise that and other similar questions, which may shorten the course of the trial; and in any event, which will raise everything which both parties desire to have raised with the idea of getting a final adjudication once and for all.

THE COURT: Well, I think I have heard you fully on this.

MR. PERMAN: If I may interrupt, I don't subscribe to any doctrine of law that a decree forbids the acquisition of a domicile elsewhere. That will be a matter of law that—

THE COURT: I don't take ~~it~~ that you subscribe to it. You don't have to take that position. Well, I think I should rule on this one way or the other now. Have I heard you fully?

MR. MCKEON: I think so.

THE COURT: Then I am going to rule this: I will permit you to file your plea in bar, and I will hear you on it. But I will not permit you to set up the same matter in your answer.

MR. PERMAN: Does Your Honor mean I can't file an answer?

THE COURT: Oh no; Oh no, not at all. For instance, you might answer that, if you wished to, he is not in contempt. The Court would hear you on that anyway, because that is a matter of proof on their part. And you might answer many other things. But you may not set up the same matter in your answer. I will hear you on your plea in bar if you proceed in your present position. And my reason for that is this: I don't

care to hear it twice. I don't intend to give you two shots at it, if I may use a slang expression.

MR. PERMAN: It can't be heard twice because whatever determination is made by way of plea in bar, even though the same allegation is set up in the answer, would be a determination of that issue so far as the answer is concerned. It cannot conceivably be adjudicated twice. It conceivably does not give me two shots at it, because whatever adjudication is made by way of plea in bar would carry with it a similar adjudication, so far as the answer is concerned. May I make this suggestion.

THE COURT: Pardon me. It would seem to me that the question of your answer at this time is discretionary, and I would exercise my discretion against permitting you to set out in your answer any matters that you set up in your plea in bar, if I go on to a hearing on your plea in bar. But I will permit you to set up any other matter that I have not heard you on.

MR. PERMAN: I'm not concerned whether it is particularly called going on to a hearing on the plea in bar or going on to a hearing on the answer, or going on to a hearing on anything else. Perhaps I haven't made myself clear as to that, and perhaps I should at this time. As a matter of fact, in these types of proceedings in the equity side of the Court our Supreme Judicial Court has said time and time again we are not concerned with what the parties label their particular pleas; we will call them for what they are. Mere definitions don't amount to a thing. We are interested in whether the Probate Court or Equity Court reach the right result. However it is raised is immaterial.

THE COURT: That is true, and that is all I intended to do.

MR. PERMAN: I'm not concerned whether this hearing—and I didn't ask Your Honor to proceed with hearing on my plea in bar or answer. What I say is this: That preliminarily Your Honor should determine the status or standing of this petitioner in so far as the Nevada proceedings were concerned. Whether it is on the answer or plea in bar or whether... doesn't strike me as very material.

THE COURT: I might say I did not intend to limit you at all except in this manner and in this fashion; I do intend to limit you in that I will not permit you to have two trials of the same issue.

MR. PERMAN: You mean before Your Honor?

THE COURT: Yes. Or two shots at the same issue.

MR. PERMAN: I don't expect to, Your Honor. Here is the way the situation stands now—and as I say, if it was going to cure something, Your Honor, I wouldn't be taking the position that I am. But it isn't going to cure anything. It is merely going to complicate it, because we have got these other proceedings as a matter of record where the case has been practically tried—this case has been practically tried; it has reached the state where there was an exhibit introduced in evidence where the Court had before it certain Nevada Statutes, certain Nevada cases, where rulings were made with reference to that phase of the proceedings. Now the Supreme Court has said this: That was error. We will remand this for the purpose of allowing the petitioner to proceed to do certain things. To show that there was an absence of jurisdiction; to show violation of General Laws, Chapter 208. My purpose, what I had in mind is that plea in bar—that is very troublesome to me. It contains two independent, not related matters. Whatever Your Honor may do with the plea in bar now doesn't effect the plea in bar; that is already a matter of record here. I don't want to be confronted with the same thing again, Your Honor, up to the Supreme Court where the petitioner will say all this may be sound law, the Probate Court may be right, but there was a plea in bar that was not effective and there was an adjudication made and the Court ought not to have made an adjudication because it contains two separate and distinct defenses.

MR. McKEON: Of course that wasn't the contention at all.

MR. PERMAN: Have you your brief here?

MR. McKEON: There was no adjudication of that plea in bar.

(Mr. Perman reads from printed sheets)

MR. McKEON: That is all true; but it isn't true that—

MR. PERMAN: Ought that to be raised again? Because we are right back to that plea in bar all over again.

THE COURT: Isn't that covered by the words, "There were also appeals from various interlocutory matters; but since they were not argued they will be treated as—"

MR. PERMAN: No, those were petitions for counsel fees and other matters. I am merely trying to cure that very awkward situation. But I do say I am not going to insist upon a double hearing before Your Honor.

I say that now, and I intend to limit myself to the presentation of the issues so far as the plea in bar is concerned, if Your Honor thinks it advisable to proceed along those lines, and not to retry or raise them again so far as the answer is concerned. Once my evidence is in, it is in.

MR. MCKEON: All of which being so, it necessarily follows you can't raise it in your pleadings twice. If you don't want two trials you are less entitled to raise it in your pleading.

MR. PERMAN: Oh, it is done all the time.

MR. MCKEON: No, it isn't done all the time; it is never done.

MR. PERMAN: To summarize the whole thing, what I am trying to do now is to avoid a technical position rather than to create one. I think Your Honor would be warranted, even if I did want to retry those matters twice before you, to rule and properly so that that could not be done. But I do think the plea in bar on the record ought to be eliminated by the substituted plea in bar so there won't be any question of double issues. I think it all ought to be before Your Honor and then Your Honor may determine whether or not the plea in bar has been sustained. If it isn't, the parties may go forward with whatever other defenses are available; if it is, I think that is the complete answer to the whole thing.

MR. MCKEON: I dislike to take up so much time, but I can't agree to that process for this reason: Assuming Your Honor sustained the plea in bar, I don't want to get into a situation where the full Court might over-rule it and come back and say that is not correct. We aren't here hiding evidence. We are going to prove that Nevada divorce And the very argument my friend makes, makes it plainer to me than it was in the beginning that they ought not to be allowed to raise it by plea in bar. He has got the same thing in his answer.

THE COURT: Have I heard you fully now?

MR. MCKEON: I hope so.

MR. PERMAN: There is so much in the record, and this answer entails such long proceedings over a course of years it is probably very difficult—we could argue this for a week and not fully cover it.

THE COURT: I don't mean to shut you off, but at the same time . . . I am going to allow you to file your plea in bar. But if you seek to set up the same matter in your answer I will not permit you to, although of course, as I said before I will permit you to file an answer and will con-

consider any matters that you may set up in it except what you have set up in your substituted plea in bar. I am going to allow you, if you insist, to substitute this plea in bar for the one previously filed; and any matters that you do not set up in this plea in bar, if I consider it competent and proper, I will permit you to set up in the answer. Although I don't think you need an answer to go on to a hearing—suppose I over-rule this plea in bar; I don't think you need any answer in a contempt proceeding or in a modification proceeding to go on to a full hearing.

MR PERMAN: Probably not.

THE COURT: I permit a very full hearing on a contempt proceeding because many things might excuse a man for being in contempt of an order of the Court.

MR. McKEON: Let me say this one thing more. I doubt—I am inclined to think that doesn't meet the situation. If we have hearing on this plea in bar and my friend becomes convinced that the plea in bar has failed, is no good, he will then want to raise another question in his answer that is already in the plea in bar and is He will have a right to, if the plea in bar as a matter of law isn't good he will have a right to file other questions even though they are related to the same topics. To be perfectly plain about it, the plea in bar, we can hear that plea in bar and have it sustained or over-ruled, either way, and there is still question whether it is good or bad, under Chapter 208. So that even if defeated on the plea in bar he can still—

THE COURT: Well, isn't that true anyway?

MR. McKEON: No. If he wants to raise anything in his answer he can do it right now, and we really ought to know what his answer is and not wait until after trial starts and then file answer out of the blue. We ought to know now before we try.

THE COURT: You mean confine him by way of defense to his answer as you would in an action at law?

MR. McKEON: That is right. It is particularly appropriate where an attempt is made to raise the same issues. There is no need of a plea in bar if you are going to raise the same thing in your answer. Very often it is done in equity and in—

THE COURT: Well, I'm not going to compel him to file an answer at all.

MR. MCKEON: He doesn't need to; but he will have a right to it even though defeated on the plea in bar, which will also throw open that same question in a different aspect.

THE COURT: Well, I will only hear the evidence on it once. If we get on in the trial and you think he is getting into matters already introduced and already gone into fully, I will stop him on your objection.

MR. MCKEON: I'm not so certain, Your Honor, that it would work out. He has a right to file an answer, but he can't file it on the same basis; he can file it on a different basis in this peculiar situation.

THE COURT: Well, I feel at least we have got to get started, so I am going to permit him to file this substituted plea in bar and go on to a hearing.

MR. PERMAN: With leave to file answer if over-ruled, Your Honor?

THE COURT: Yes, but not on the same matter.

MR. MCKEON: Will you save my exception, if Your Honor please.

THE COURT: Certainly I will save your rights.

MR. MCKEON: Well, we have motion for specifications.

THE COURT: I have a motion for this—and by "this," I mean the substituted plea in bar.

MR. PERMAN: I suppose this probably includes the motion as I see it there, "Now comes the respondent, without waiving his demurrer," (etc., reading aloud from paper).

THE COURT: Oh, I see. That's right. Oh yes, that constitutes a motion. This motion to file a substituted plea in bar is allowed. And you ask that your rights be saved?

MR. MCKEON: Yes.

THE COURT: And the petitioner's rights are saved on an objection.

MR. PERMAN: Also include the leave to file an answer if the plea in bar is over-ruled, provided they do not embrace the same matters?

THE COURT: I will not put that into this order now, but I have so stated to you, and that is in the record. But I will not put it in the record now as qualifying the allowance of this motion.

MR. PERMAN: It is also, if Your Honor please, directed to the amended petition for modification, and motion to file final demurrer, and the demurrer. I think I have already practically covered my reason for a demurrer to that amended petition for modification, in that it does not

contain any proper allegations required to sustain such a petition. It is in effect, as I view it, a motion for a new trial upon issues that were determined and adjudged by the Probate Court and by the Supreme Judicial Court, and I am going to suggest with reference to that perhaps Your Honor might before ruling on the demurrer want to examine the record and the amended petition for modification. There may be found on Page 52 of the amended petition—

THE COURT: Have you an extra copy?

MR. PERMAN: If there isn't one in the Probate Court, I will give Your Honor this one. I have another one up at the office, although this is the only one I have down here. I spoke to the clerk out there and he said he didn't think there was an extra one. But I will leave this one with Your Honor.

THE COURT: I haven't even the original here.

MR. PERMAN: I think Your Honor ought to have this record and I think Your Honor ought to have record of the trial, the separate support proceedings. I think they are part and parcel of this case here. That went up to the Supreme Judicial Court and the Supreme Court record is available, or ought to be available somewhere. I think that ought to be before Your Honor.

THE COURT: What do you refer to in particular?

MR. PERMAN: Paragraph 5 of the amended petition: "By virtue of the said merits and by the legal effects of said decrees, she is the lawful wife." I think #5 is an allegation to the effect that the petitioner is the legal wife of the respondent by virtue of the certain decrees referred to, the decree for separate support and the decree dismissing the respondent's libel. I think if anything, without going into the merits of that particular allegation I think it is a conclusion of law and ought to be stricken. Then Your Honor will note the concluding paragraph—I think this asks for modification based on certain circumstances, which certain circumstances were all, as I maintain, adjudged, adjudicated and determined. And there is no right in the petitioner to re-open or to re-hear any matters that were fully adjudged and determined in this Court, whether the award meets with her approval or not. I don't think that should have any bearing. An award was made; all those factors were taken into consideration at the time. It ought not to be re-heard. I think what that amounts to is

a motion for new trial, and I submit unless the petition is filed in different form . . .

THE COURT: Without any argument on Mr. McKeon's part, I cannot agree with you on that. By that, I mean your last statement that Paragraph 7 of the amended petition states, "Under all the facts and circumstances and including the increased cost of living, the adequate financial means of the respondent and the reasonable needs of your petitioner according to her status of life . . . \$35 a week is an amount insufficient in fact and in law."

MR. PERMAN: That is precisely, if I may interrupt, the reason it was taken to the Supreme Judicial.

THE COURT: But circumstances may have changed greatly since.

MR. PERMAN: Precisely, and I think it should be shown what they are. That is my objection to that. It amounts to a right to a re-determination of this whole thing.

THE COURT: Well, she would of course have no right to an increase if circumstances were identical with the circumstances that were before the Supreme Judicial Court or circumstances before the Probate Court and heard on appeal; because that matter has been determined.

MR. PERMAN: That is right.

THE COURT: But it is certainly open to her, as I see it, to show to the Court, unless your Nevada divorce is a bar, and if she is still the wife of the respondent, it is certainly open to her to show if she can that circumstances have changed either with the respondent so that he is in much better financial circumstances, or with the cost of living so far as she is concerned and in general has increased.

MR. PERMAN: I think that probably Your Honor has stated the law accurately, but as I see the allegation in that petition it is an allegation which seeks a review not limited to time, not limited since March of 1942, but all-embrasive, all inclusive.

THE COURT: I think there is something to what you say on that.

MR. MCKEON: I agree there there is, and it is our contention that that is wholly in accord with the law of the Commonwealth that we have got to go back to the date of marriage so far as the question of allowance now is concerned, and show all the facts and circumstances. So my friend's complaint is addressed to the law.

MR. PERMAN: That isn't the law, and never has been the law, and I don't suppose that ever will be the law. But I think Your Honor will probably see what development has taken place. Having already tried this before one Judge of this Probate Court who knows what evidence went in, what evidence was determined, what factors were used by him, he would attempt to utilize Your Honor's lack of knowledge of what proceeded here to open up the whole thing.

THE COURT: Aren't you now accusing your opponent? You are accusing him of a fault before he commits it.

MR. PERMAN: I have good reason to, because that is precisely what—

MR. McKEON: This same discussion was had in the full Court. However the approach here, this is an ordinary petition for an increased allowance, and I am perfectly willing to amend it and phrase it as it is ordinarily phrased and leave out the notice I have given to the respondent what to prepare for, if that is what he prefers, and let it be clearly understood this is the ordinary, usual petition for an increased allowance.

MR. PERMAN: He has got a perfect right to file an ordinary, usual petition for increased allowance, but not something which seeks a review of an issue which was adjudicated and determined by this Court and by the Supreme Judicial Court.

MR. McKEON: One more thing—I want it to be perfectly clear that there isn't anything unusual or extraordinary about this petition. It is the ordinary run-of-the-mill petition for an increased allowance for separate support based on—

MR. PERMAN: Certainly the allegation has a relationship as to husband and wife You are raising the law question by your conclusion of law, not allegation of fact.

THE COURT: Well, it is my understanding that if this woman is still the wife of this man, if this petitioner is still the wife of the respondent, she may come before this Court and ask that the original decree be modified and that she may have an award for her support based upon the present cost of living and the ability of the respondent to support her, in the proper station of life of course.

MR. McKEON: Your Honor understands that I do not agree that the petitioner is limited to doing that.

THE COURT: That the petitioner is limited to that?

MR. MCKEON: That's right. I want it understood I am not agreeing, for instance, as contended by Mr. Perman, that we start with March 25, 1942 with the evidence. It is perfectly clear that we start . . . what she was entitled to, what she was deprived of and so forth. However, it seems to me the important thing now, this, either by amendment or as is, is the ordinary petition for modification of a separate support decree, asking for an increased allowance, and all other frills may be disregarded. It was only made to make the original petition more plain. Actually, it turned out the other way. So that I think again the respondent ought not to have two shots. If the thing is no good, he doesn't need his demurrer, and that's all.

MR. PERMAN: May I say something, if Your Honor please?

THE COURT: Go ahead.

MR. PERMAN: I am not able to agree, Your Honor, with the version that the matter of divorce and determination of that gives the right to proceed in here for modification. But I insist emphatically this is not a question of two shots so far as I am concerned. This is a question of a number of shots so far as the petitioner is concerned. Whatever may be her dissatisfaction with the Nevada decree, with the Probate Court, while the Supreme Judicial Court has said she could have a re-hearing so far as the effect of the validity of the divorce is concerned in Nevada, it hasn't given her any right to re-hearing it as far as the decree of this Court was concerned. The petitioner cannot take the position that by virtue of the decree of this Probate Court certain rights . . . and then proceed to show that there was error in fact or in law in the award which was made after full hearing and determination in this Court.

MR. MCKEON: We are not going to do that; we don't claim the right to do it.

THE COURT: Well, you saved me from saying it. If that were so; Mr. Perman, a petition for modification would never arise.

MR. PERMAN: Perhaps I didn't make myself clear.

THE COURT: I think you did.

MR. PERMAN: We don't question the petition is for modification . . . as a matter of right where the grounds for modification are predicated upon such change in circumstances as occurred after the entry of the decree giving rise to the order. Perhaps I didn't hear my brother state

that he had a right to go back to the time of marriage. I may have heard wrong, but if I heard right, in my mind and in my opinion that amounts to nothing more than presenting the same thing that was presented before the former Judge, in the hope and expectation that Your Honor will arrive at a different result.

THE COURT: I may say to you unless you show me to the contrary I am not going to limit him in the pleadings regardless of how I might consider it in arriving at a conclusion. I am not going to limit him by way of pleadings unless you can show me something that would indicate that I should.

MR. MCKEON: Are you still arguing demurrer or still arguing merits?

MR. PERMAN: I am arguing demurrer again. Would Your Honor like to see a case?

THE COURT: Yes, I think it is all important that I do.

MR. PERMAN: I refer Your Honor to Burgess vs. Burgess, a reading of the headlines alone.

THE COURT: Well, Mr. Perman, I don't think that he seeks by this petition for modification to do what was sought in the Burgess case. The Burgess case sought to set aside the original decree. I find these words: "These Courts may also revise their decrees to accord with the changed conditions as they may arise in proceedings for the support of the wife," and cites General Laws, Chapter 209, Section 32, where it is provided that the Court may from time to time revise and alter said order or make a new order; but a decree of the Probate Court cannot be revoked for supposed errors in the decision of the Court because of false testimony on any of the issues involved or because the petitioner's case was not properly presented. Reciting Zeillin vs. Zeillin and Wright vs. Macomber, where the Supreme Judicial Court set certain limits on revocations, I am familiar with both cases recited there. But as I understand this, the petitioner seeks no more than to do what is permitted under Section 32 as quoted here, that the Court may from time to time revise and alter such order or make a new order. It goes on, "The petition is not an application to review the former decree because of an apparent error or on account of changed conditions." But this is. This case wasn't. I see nothing in

that case that indicates that a demurrer may be directed to a petition for modification.

MR. PERMAN: You mean—

THE COURT: I see nothing in this case that indicates that.

MR. PERMAN: I brought that case to Your Honor's attention to indicate that the account accomplished by petition for modification what we cannot accomplish by a petition for review. In the petition for review there are certain things you can't do so far as a decree is concerned.

THE COURT: You cannot now set aside the original decree unless of course for other reasons than here stated. It doesn't seek to do that.

MR. MCKEON: If Your Honor will look at—

MR. PERMAN: And it is my position that you cannot obtain a review on petition for modification.

THE COURT: I don't think that he does.

MR. MCKEON: I have tried to make it very clear that the amended petition—

MR. PERMAN: I think if Your Honor will read the Supreme Court record of the separate support proceedings as they went up to the Supreme Court, that is substantially the same as that.

MR. MCKEON: It seems to me quite remarkable that the respondent took no notice of this amended petition, if there is anything in it. Whether they did or not, I am perfectly willing to file an amendment identical with the original petition for modification on Page 4, "Respectfully represents" (and so forth, reading aloud from printed page), and I am perfectly willing to have the amended petition read identically the same way. Either way, we ought not to be taking up Your Honor's time on this demurrer.

THE COURT: Have I heard you fully on your demurrer?

MR. PERMAN: Yes, Your Honor.

THE COURT: Demurrer over-ruled.

MR. PERMAN: Will Your Honor save my rights?

THE COURT: Yes.

(Hearing suspended until 2 P.M.)

P.M. SESSION

THE COURT: This is a motion for leave to file a demurrer. I heard you on that demurrer, as a matter of fact.

MR. PERMAN: Yes.

THE COURT: So in effect I allow the motion.

MR. PERMAN: You allow the motion for leave to file and over-rule—

THE COURT: Over-rule the demurrer.

MR. PERMAN: Which I think leaves us just one more matter to dispose of, and those are specifications. (Hands paper to Court)

THE COURT: Motion for specifications?

MR. PERMAN: That is right. (Court looks at paper handed him)

MR. MCKEON: I have no objection to the allowance of the motion.

THE COURT: This may be allowed.

MR. PERMAN: Then there are respondent's and petitioner's specifications to the respondent. I have a copy here, and I think Your Honor should have the original.

THE COURT: I don't think I will need this, because I have the advance sheets. I read them all. I haven't gotten that far yet.

MR. MCKEON: I just received this (indicating) this morning.

THE COURT: These are styled specifications, but they are in the nature of interrogatories. I don't think it makes much difference what you call them, does it?

MR. PERMAN: Except this, if Your Honor please—

THE COURT: Ordinarily one is bound by specifications.

MR. PERMAN: That is right.

THE COURT: Interrogatories and answers to interrogatories are no more than the answers one might make on the witness stand. I mean they have no more weight or controlling force.

MR. PERMAN: They are in the nature of an enlargement upon the issues of the pleadings in any particular cause; and consequently the courts have adopted a pretty strict rule with reference to—

THE COURT: Aren't they in the nature of a limitation?

MR. PERMAN: Yes, they are; as I was going to say, because of that the courts are inclined to use specifications as a limitation, and a pretty severe and confining situation. Now I don't think it was my reaction as I read these over that they were not specifications in the true sense of the

term, that they don't aid and particularly aid in the enlargement of any issue, in the enlargement of the pleadings. Having that in mind, it is rather a pretty harsh thing to say to the respondent you ought to answer these, and at the same time you are going to be limited—

THE COURT: Limited in proof.

MR. PERMAN: That is right.

THE COURT: Are you satisfied to have these styled as interrogatories? They are interrogatories in their nature.

MR. MCKEON: Well, my personal view is they are within the specification principle. They are vital to the issues here . . . bad faith of the respondent, who did pre-arrange and had the Nevada complaint and divorce for the purpose of remarrying and did remarry within fifteen minutes after that decree of divorce. It is, I think, vitally significant.

THE COURT: Oh, it is vital that you should know this, vital that he should answer, and you are certainly entitled to this information without any question. You don't question that?

MR. PERMAN: No. May I make an observation, if Your Honor please? I don't think at this time that we ought to make inquiry into the merits, but I do want to point this out: So far as these so-called specifications are concerned, they are addressed not to the issues that are raised by the respondent, but to the issues which the petitioner herself has raised, namely, the question of jurisdiction, the question of application of General Laws, Chapter 208. Now we are called upon—which is rather an unusual thing—to specify with reference to issues raised by the petitioner and not raised by us. I have never known of a situation where specifications were allowed under those circumstances. So far as inquiry as to the particular facts here are concerned, I have no objection to disclosing them. I think they are fully disclosed or a good part of this disclosed right in the record. A lot of it is right in the record. I have no objection to furnishing that information, but it ought not to be furnished predicated on the basis that they are specifications and that they are part and parcel of issues which the respondent has raised here.

MR. MCKEON: The statement is half true, but only half true. The issue raised by the respondent is the validity of this divorce in Nevada. She went there and filed the original complaint. This is addressed to that issue, not raised by us. She waives the question of the Nevada—

THE COURT: Well I don't think I would allow these as they are styled, specifications; but I will of course as interrogatories.

MR. MCKEON: Either way. I would prefer the specifications especially since I raise no question—

THE COURT: If we amend it we have got to get your client to sign the motion for amendment, haven't we?

MR. MCKEON: I would doubt it. Your Honor orders it amended as sort of interrogatories.

THE COURT: Let's see, she doesn't have to sign everything off this—

MR. MCKEON: I don't think so.

THE COURT: No. I think that will be all right.

MR. PERMAN: As far as I am concerned, I think the original can be changed right here and now. I would have no objection to that. To avoid cluttering of the record, I think that can be changed right on the face of it.

THE COURT: Would you suggest changing the word "Specifications" to—

MR. PERMAN: "The petitioner moves that the respondent answer the following interrogatories."

THE COURT: It need not be allowed as a motion because the law takes care of interrogatories. In any event, you are supposed to answer them in so many days, and there could be an order for an answer.

MR. PERMAN: I think the back of it could be changed.

(Court makes change on back of paper)

THE COURT: Well, what next?

MR. MCKEON: I think of nothing else. Oh, I do have one more thing. After that is answered I would like—well, I would like now to reserve leave to file replication if necessary. It helps to clarify the issues, and I would sort of like to file one.

THE COURT: Well, it doesn't seem to me necessary.

MR. MCKEON: I don't know what his answer is going to be, and I won't know until—

THE COURT: Suppose I say this; If it appears necessary or advisable I would consider it at that time.

MR. MCKEON: All right.

MR. PERMAN: I have this in mind: Your Honor has got the record, which will undoubtedly prove extremely helpful to you in ascertaining—

what has gone before. I am going to offer this suggestion: I have brought along a copy of the brief which I have submitted to the Supreme Judicial Court. It contains the issues as the respondent sees them, together with a review of the authorities, and I thought perhaps Your Honor might want to have that along with the record. And I think the petitioner, if he wants to, could submit the petitioner's brief along with it.

MR. McKEON: Surely my brief wouldn't be helpful.

THE COURT: You don't think it would be?

MR. McKEON: I know it won't be.

THE COURT: I will look them over. Now what do you want to do about a date for hearing?

MR. McKEON: Well, I think this change to interrogatories complicates it a little bit. I wouldn't know what to say now until those answers are in.

THE COURT: Well, shall we leave it open?

MR. McKEON: I would be glad to.

THE COURT: I would prefer not to have it during the summer. I am supposed to be on vacation now, and in August I will be in Springfield alone. That is supposed to be Judge Dennison's vacation.

MR. PERMAN: I think probably we are both confronted with the same difficulty here. In all fairness to Your Honor I think we should probably state it. I am hoping that the specifications will be helpful, inasmuch as Mr. McKeon is hoping that the answers to interrogatories may be helpful. We have an idea as to what evidence is involved, but no exact knowledge. As I understand it, Mr. McKeon has a witness he thinks he would have to utilize, depending on how the evidence shapes up, and that that witness is one they might find hard to obtain at a particular date. I am in somewhat of an analogous position in that I feel, depending upon the way the evidence shapes up after it goes in, I may require the aid of depositions. I don't suppose they may take any too long. I don't know but what they might be gotten in so expeditiously it shouldn't be more than a matter of ten days or so. Now how that would effect the proceedings so far as the summer is concerned, I don't know. As I told Mr. McKeon, I had made arrangements to take the latter two weeks off; but if he felt that we could get started anyway sometime in the latter two weeks I may alter my arrangements.

THE COURT: What two weeks?

MR. PERMAN: The latter two weeks of this month.

THE COURT: I would have to give up my whole vacation.

MR. PERMAN: All right; we will let it go.

MR. MCKEON: One other thing here. If the respondent is, so to speak, going to ask us to proceed with the trial without knowing—

MR. PERMAN: No.

MR. MCKEON: Wait a moment; You have already asked it. To proceed with the trial without knowing what the issues, what issues of fact he is going to raise in his answer, he ought not again to have an opportunity to file depositions. Let him file them now. He knows what he wants to raise. If we are going to have depositions we ought to have them filed now. Why wait until the middle of the trial?

THE COURT: Well, I can conceive of a situation where a man might have to file depositions during the course of a trial.

MR. MCKEON: Once in awhile.

MR. PERMAN: I think if Your Honor will read the record and observe the number of various positions that were taken by the petitioner, it might be helpful in understanding the difficulty I would have at this time in ascertaining precisely what her position is going to be, what her specific position is going to be, and what I would need to meet that particular position she may decide ultimately to rely on.

MR. MCKEON: That comes back to where I was. The whole claim is in the record, so he says. So if it is, there is going to be no surprise in the trial on which he would file depositions. He knows now; I see no reason for postponing. We have been all over this twice.

MR. PERMAN: Postponing what?

MR. MCKEON: Postponing the taking of depositions. If you think you need depositions now is the time to take them. Especially since you say our claim is in the record.

THE COURT: Well, it would seem to me that that is so; although I did say where I could conceive of a situation where—

MR. PERMAN: Yes, I think if Your Honor will read the record you will understand.

THE COURT: I think if you have depositions in mind you should file them now. But I will say this: If any situation does arise where I

think in fairness you should have opportunity to file further depositions. I will admit it. I will pass upon it at that time.

MR. MCKEON: That will be agreeable.

MR. PERMAN: That is satisfactory.

MR. MCKEON: The reason I said my brief wouldn't be helpful is because it is on an entirely different issue than the present trial.

MR. PERMAN: I assume so far as filing depositions is concerned, I can file them after the specifications have been filed, so I can ascertain precisely what grounds are intended to be used as libel and address my deposition to those grounds.

THE COURT: Well, I think that is reasonable; it sounds reasonable. What do you say?

MR. MCKEON: Well, if our case is all in that record, as I think it is, in other words, his obligation shouldn't be dependent upon ours.

THE COURT: I don't know what you have in mind.

MR. PERMAN: I don't either, Your Honor. I would like to find out precisely what the petitioner has in mind here. It would serve no useful purpose to file depositions as I have in mind with reference to the situation the petitioner is going to take.

THE COURT: Why don't you file your depositions and as I said, if it appears then that you can show me where you need to file others to bring before the Court any evidence you have in mind, if I think it would be helpful or competent I will allow it.

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the foregoing matter.

LAURA G. QUINN,
Official Stenographer

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT

COE

VS.

COE

HEARING BEFORE JUSTICE STAPLETON, BEGINNING FEB. '5, 1945

APPEARANCES:

FRANCIS P. MCKEON, Esquire
NUNZIATO FUSARO, Esquire

} for KATHARINE C. COE

SAMUEL PERMAN, Esquire
GEORGE H. MASON, Esquire

} for MARTIN VAN BUREN COE

THE COURT: Now is there anything else to dispose of before we start on the actual trial?

MR. PERMAN: There is, if Your Honor please, a motion which has been filed by the respondent to revoke the assignment for hearing before Your Honor. I think that has been disposed of by decree of Judge Wahlstrom denying the motion on the 31st day of January. I want the record to specifically note the respondent's objections and exceptions to the determination of any issue on the merits or any decree by Your Honor on the merits of these causes.

THE COURT: Well, this is news to me; and I don't know that if it was heard by someone else—

MR. PERMAN: May I present the background briefly, Your Honor?

THE COURT: Yes.

MR. PERMAN: These petitions are predicated upon a decree that was made on the 25th day of March, 1942, by Judge Wahlstrom. That was a decree made after prolonged and extensive hearings—I think something like eight trial days; and by that decree the petitioner here was adjudged to be living apart from the respondent for justifiable cause, and she was awarded the sum of \$35 per week. Subsequently the petitions for contempt and modification were filed and those came on to be

heard before Mr. Justice Wahlstrom. At that hearing the respondent offered his evidence and rested; and the issue then arose as to when as a matter of law the petitioner was entitled to go forward on an offer of proof that was made in reference to the jurisdiction of the Nevada Court, and a decree was then made on the then state of the record by Judge Wahlstrom that the petitioner was not so entitled to go forward. Your Honor has the rescript and the opinion of the Supreme Judicial Court as to that. The matter then came on for assignment for trial before Judge Wahlstrom shortly after rescript was handed down by the Supreme Judicial Court and a trial date was set the latter part of June, Judge Wahlstrom indicating that so far as July and August were concerned he would be away for some vacation. Thereafter, I think on July 7th, a decree was made ex parte by Judge Atwood requesting Your Honor to sit simultaneously in the Probate Court for Worcester County. I have here an attested copy of that decree that is docketed in Case #143808 and reads as follows: "I request Honorable Thomas H. Stapleton, Judge of Probate in and for the County of Hampden to perform part of the judicial duties of this Court by holding a simultaneous session of this Court at the Court House at Worcester at times and places designated by . . . by reason that neither of the Judges of Probate are available to hear said case." What transpired on July 7 of 1944 I have no way of knowing because that decree was obtained ex parte. Subsequent to that, I think on or about July 10, Your Honor disposed of and heard certain interlocutory matters. I think there was demurrer, specifications, interrogatories, amended plea in bar, and motion to modify or vacate. Later there was filed by me, so as to obtain a judicial clarification of the situation as to what Judge would preside and as to what Judge could properly hear the issues involved in these matters, there was filed by me a motion to vacate certification. That was filed on October 19, 1944. The grounds were there set forth. That came on to be heard before Judge Atwood who, on January 4th, 1945, made the following decree: "On the foregoing motion, it appearing that the certification referred to was entered on the docket in this case by mistake and inadvertance and has now been expunged, it has been decreed that this motion be disallowed." I think prior to the making of this decree Judge Atwood stated in the presence of myself and Judge Wahlstrom that at the time this request

was made he did not intend it as a request for Your Honor to sit specifically in this case. It was a so-called general request to dispose of whatever matters were to be heard. There was following that a number of conferences between counsel and Judge Wahlstrom to clarify the situation.

THE COURT: Well, I must say that I do not understand this.

MR. PERMAN: I will proceed to state the respondent's position as soon as I state the factual situation, Your Honor.

THE COURT: All right; proceed.

MR. PERMAN: On January 5 of 1945 counsel were notified as follows: "Please be advised that the question of setting a date for the above entitled case will be taken up by the Court on Friday, January 12, at 11:30." Prior to January 12th counsel conferred with Judge Wahlstrom with reference to this precise matter. And following that notice a letter addressed to counsel dated January 9, 1945, read as follows: "This is to clarify notice in regard to setting of a date for hearing in the Coe case which was sent several days ago. The matter of setting a date for the hearing of this case by Judge Wahlstrom, will be called to the Court's attention at two o'clock on Friday, January 12." And I refer Your Honor's attention to the words, "a hearing of this case by Judge Wahlstrom." On January 12th of 1945 counsel appeared before Judge Wahlstrom for the purpose of setting a date for trial pursuant to the notice, at which time petitioner's counsel took the position that Judge Wahlstrom lacked jurisdiction to either set a date for trial or proceed in any material respect with any of the matters involved in these proceedings. A stenographer was present at that time to take the statements of counsel and the Court, and I have no objection to having the course of that proceeding set forth and made a part of this record. At that time Judge Wahlstrom set the date of February 5, 1945, for the trial of these issues before him, and as I understand had entered that assignment on the docket-book in his own handwriting. On January the 18th, 1945, Judge Wahlstrom requested the appearance of counsel before him and at that time notified counsel that in view of the hearings on the interlocutory matters that took place before Your Honor, that Your Honor was correct in assuming, as appeared in certain correspondence, that you were to proceed with the hearing on the merits of this case, and that he felt he

had no jurisdiction to further continue and would assign Your Honor to hearing the merits of this matter. That in substance was the various steps involved which give rise to this present issue. The position of the respondent is this: That under the General Laws a request may be made for a Judge of another county to come in and have simultaneous sittings with this Court under certain circumstances—I think circumstances which ordinarily and generally apply to matters which are of a nature which can be heard from the beginning and where neither side would be prejudiced by having what would amount to a review of a discretionary matter which already had been heard and determined by some other Judge. The request that was made, therefore, by Judge Atwood would have no application to this situation anyway. Again, the request was made by Judge Atwood to meet a certain contingency, that is, the inability for the Judge sitting here, particularly Judge Atwood, Judge Wahlstrom, to hear any matters because of the absence of Judge Wahlstrom during the summer recess. Even if valid in its inception, the availability of Judge Wahlstrom now causes that request to lapse. The respondent contends that particularly where a matter for contempt and modification is involved the Judge who should properly hear that case in fairness to both parties is the Judge who originally made the decree on which those petitions are based. There is another important factor involved here. Your Honor must bear in mind that we are here pursuant to a rescript of the Supreme Judicial Court in a situation where the respondent has wholly tried his case. If another Judge is permitted to go forward it means the determination on the merits of a situation where one party has already rested his case before one Judge and an attempt is made to issue a decree on the merits of the entire case by some other Judge; and I don't know of any situation where that has ever been done. In my opinion the rescript of the Supreme Judicial Court was in effect a mandate to Judge Wahlstrom to permit the petitioner to go forward by the presentation of competent evidence along certain issues, and that was a mandate directed to the Judge who had heard the case up to that stage. It is my opinion and I urge it, that the obtaining, on the request, of another Judge to sit in the circumstances under which this was obtained, namely, by going to a Judge wholly disconnected with the case and obtaining a request without a full and complete disclosure of all the circumstances involved,

ought not to be the basis upon which these further proceedings ought to be heard.

THE COURT: Now I don't just understand that.

MR. PERMAN: Well—

THE COURT: I mean I don't understand your statement. It is not clear to me what you mean by it.

MR. PERMAN: As I understand Judge Atwood, a request was made by the petitioner's counsel for a Judge to come in during the absence of Judge Wahlstrom, and as I understand Judge Atwood, it was not his intention to have that request refer to the Coe case, this case that is now in issue. It had no application, the request originally had no application to this case when made. I think that is plainly indicated by the decree that Judge Atwood made that that refers to my motion to vacate the certification. I think further, if Your Honor please, that there is no question so far as the present availability of Judge Wahlstrom to hear this issue is concerned. There never has been, and so far as I know never was any issue involved of legal disqualification of Judge Wahlstrom under the statute. That being so, the respondent urges that the only one properly having the power and authority to hear the rest of this case on the merits pursuant to the rescript of the Supreme Judicial Court and its opinion is Judge Wahlstrom, and Judge Wahlstrom alone.

(Mr. McKeon shows paper to Court)

MR. PERMAN: Is that different from anything I have read?

MR. MCKEON: I don't know what you have read. It is the record of the Court.

MR. PERMAN: Do you care to offer it?

MR. MASON: I think I would offer it myself.

MR. PERMAN: Have you any objection to my offering it?

MR. MCKEON: Yes.

MR. MASON: Well, he has shown it to the Court. I think we are entitled to offer it.

MR. PERMAN: I offer it.

MR. MCKEON: Wait a moment for the attorney (referring to temporary absence from room of Mr. Fusaro)

MR. PERMAN: I haven't finished.

MR. MCKEON: Is it of overwhelming importance to offer it this

minute?

MR. PERMAN: I think we should offer it in sequence.

MR. McKEON: I think you should not offer it now. I am going to argue why you should not.

MR. PERMAN: May I have this marked for identification?

THE COURT: It may be marked for identification.

MR. PERMAN: May it be noted as the request that was shown to Your Honor by counsel for the petitioner which counsel for the respondent requests to be marked as an exhibit, marked for identification rather.

THE COURT: It may be marked for identification.

(MARKED A for Identification)

(Mr. Donohue, Register of Probate, brings in papers in the case)

THE COURT: Well, is this the original certification?

MR. DONOHUE: That is right.

THE COURT: And is it the only certification?

MR. DONOHUE: That is correct.

THE COURT: Then the only thing that happened to it was a different docket?

MR. DONOHUE: That is right.

MR. PERMAN: And an expunging from the records in this case.

THE COURT: Well, if as much is going to be made of it I don't know but what you should be sworn in and that may appear in the record after, I hear Mr. McKeon.

MR. McKEON: May I see those papers?

THE COURT: This is the Court paper.

MR. McKEON: May it please the Court, I would like to first state that Miss Quinn is the commissioner appointed to be here in this case and sworn on July 10th. The argument which has just been addressed to Your Honor is, it seems to me, quite irregular, addressed to nothing before the Court and in violation of what has become the case. Much of it is based on an exclusion of vital facts; some of it is based, I think, on a wholly erroneous view of law. In my understanding the request by Judge Atwood on July 7 was in no sense a decree which impinges upon any rights of any of the parties. It is a statutory exercise of judicial and legislative authority which does not concern the parties or counsel. A decree of January 4th in which the respondent's motion to vacate was

denied is a final decree, has become a law of the case, is not now before the Court; and the only effect of expunging is the factual one of regarding it in this case, and in this case only as if the request by implication applied to this case alone and excluded Your Honor acting on July 10 on any other cases that might have been properly presented to you. The practise of the Court is, as far as a request to a Judge of Probate outside Worcester County, such requests are filed under the name of the particular Judge and not in any sense limited or confined to any particular case, but there is transferred to him full jurisdiction to hear and decide any cases which in the opinion of the standing Justice required his attention. That I think is the only reason that the certified copy of Justice Atwood's assignment which has just been marked for identification was docketed in a number ordinarily and usually assigned to Your Honor and expunged from being docketed under number entitled 131205. With reference to January 5, 9 and 12 and 18 to which some argument has been addressed to Your Honor, I call your attention that Judge Wahlstrom made a decree under date of January 31st, 1945 under which those matters would likewise become not open to argument by the respondent. On that petition the decree reads; "The petitioner, Martin V. B. Coe" (etc., reading aloud same). It is suggested that the respondent has wholly tried his case on matters as to one of the grounds for supporting this irregularly offered contention I think, Your Honor, and Your Honor will recall as a fact that on July 10th the respondent, against the not inconsiderable objection of the petitioner, moved to strike out and limit the plea in bar filed by him upon which some hearings had been held. That motion was not allowed; that plea in bar was eliminated; a substitute plea in bar was filed and allowed, and on that substituted plea the respondent has not been heard and is now entitled to be fully heard. I am unable to take seriously the claim that the full Court does not know how to make a rescript limiting the course of a hearing to be held thereunder. I take it as obvious that if that Court had intended to make a mandate that Judge Wahlstrom, and he alone, should hear this case they are perfectly capable of making that kind of a rescript. And they did not do so. The proceedings held before Your Honor on July 10th, which have briefly been referred to by the respondent, are a matter of record taken down by the commissioner. On that day the respondent made no hint of a suggestion of an exception

to the proceeding being a full and complete trial before Your Honor. On the contrary, he insisted that Your Honor receive from him the rather long record of the case that last went to the full Court, to receive from him his brief of some sixty pages, and asked Your Honor to examine them in order that you might thereby become more familiar with the situation and you would perhaps be better able to hear his evidence, as that of the petitioner. There was a good deal of discussion of evidence by the respondent who in brief assured Your Honor and the petitioner that when his evidence was fully heard upon the substitute plea in bar he had no intention of offering the same issues or the same evidence upon any answer that he might later be allowed to file. So that both parties agreed to trial before Your Honor upon a presentation of all material evidence and with a view then stated by both parties that there might be a complete adjudication of all the issues so that there might be avoided the possibility of going to the Full Court upon a part ruling of the issues between these parties. I suggest, therefore, that the certification of July 7 by Judge Atwood and the decree of Judge Wahlstrom made but a few days ago, on January 31st, leaves it—and the only two standing judges of Probate in the County of Worcester—when we now have a situation in which it is quite clear that both Judges considered themselves unavailable in this case, that the case in its entirety is before Your Honor for final disposition and that one may presume that if there were any formal difficulty in the assignment of July 7 or the decree of January 31st both Judges would be willing to make it even more clear as to their unavailability and their request to Your Honor to hear and assign these issues. And may I add a word, that in my opinion under the statute a mere request by a standing Judge to a Judge out of the county on file in the records of the Court is an exercising of full authority as to which no party has any right to notice or opportunity to be heard or to a hearing. It is the sole and exclusive province of the Judge to determine whether assistance be needed. It seems to me that naturally covers the situation. I shall be glad to answer any inquiries, if I am able.

THE COURT: May I see the decree of Judge Wahlstrom that you read? (Mr. McKeon hands same to Court)

MR. MCKEON: Pardon me for interrupting, Your Honor; but would this be a good time to have a recess? The Judge of Superior Court

desires me.

THE COURT: Yes, we may have a recess.

(RECESS. HEARING RESUMED)

THE COURT: Had you finished, Mr. McKeon?

MR. McKEON: I think so, Your Honor, unless there are any questions.

F. JOSEPH DONOHUE, sworn by the Court, testified as follows:

Q. BY THE COURT: What is your name? A. F. Joseph Donohue.

Q. Are you the Register of Probate? A. I am.

Q. For the County of Worcester? A. I am.

Q. Now I call your attention to the decree of Judge Atwood dated January 4, 1945. I am not going to ask you to explain his decree, but I am going to ask you to explain what happened to the certification of July 7th, 1944.

A: Well, when Judge Atwood signed the certification on or about July 7—I do not know whether it was that date we put it in the records or not, but I gave it to the docket clerk and I myself had put on top 131205, and then I remembered that we didn't docket them that way, that when we asked Judge Stapleton or Judge Davis rather to come to Worcester we docketed them under their own name. I went in to Judge Atwood and he said that is correct, that should be taken out of the Coe case and put under Judge Stapleton's own name. Which I did. We made a name card for you and docketed it under 143808 I think it was. 143, that's right, 808.

Q. Well, is this a true statement: That the certification remained as it was except that there was a new and different docketing?

A. That is correct.

Q. Was there anything else that happened to it? A. No, Judge, no.

THE COURT: Any questions?

Q. BY MR. PERMAN: Mr. Donohue, was Judge Wahlstrom on vacation during the month of July?

A. Month of July. That is correct; I believe the book will show that. Judge Davis was assigned for the month of July and Judge Wahlstrom usually takes the first two weeks in July. The rule is one Judge takes the first two weeks in July and the other takes the last two, and both take the month of August.

Q. And at least since September has Judge Wahlstrom been sitting regularly? A. Oh yes.

MR. McKEON: I object; wait a moment.

THE COURT: Well, I don't think it makes any difference because I think Judge Wahlstrom has already decided, that the question was resolved here—in other words, you have made two motions to revoke the certification prior to the motion you have just made. And Judge Atwood—well, one is marked "Disallowed," and Judge Wahlstrom has marked it "Dismissed." I think the question has been decided.

MR. PERMAN: My purpose in asking the particular question was to show the availability of Judge Wahlstrom.

THE COURT: Hasn't it already been gone into?

MR. PERMAN: Yes. As it stands now I think the situation is this: That so far as Judge Atwood was concerned, I think his decree indicates that there was no request on July 7th for Your Honor to sit so far as this case was concerned. The request itself, the general request, if Your Honor please, insofar as it would apply to the usual and ordinary cases that could properly come up I think so far as that is concerned the request was valid. I think that determination was one in which he decided that insofar as the request pertained to the Coe case that the expunging of it and the removing of it from the docket no longer made it applicable to these cases. I think the decree of Judge Wahlstrom is predicated on the absence of any jurisdiction on his part to proceed, to hearing of these cases on the merits in view of what had transpired before Your Honor on July 10.

THE COURT: I don't want to interrupt you too much, but it appears to me that the decrees speak for themselves. Your motion addressed to Judge Wahlstrom is a long one and I noted in reading it that you have raised every question that you raised here orally.

MR. PERMAN: I think I did substantially cover them.

THE COURT: My only purpose in calling the Register was to deter-

mine for the purposes of the record here just what happened to the certification. However, if you wish it to appear in the record—I don't know, I suppose you might have to call the Judges themselves.

MR. PERMAN: I have no objection so far as the record is concerned to let it speak in any way Your Honor thinks it should as to all that happened. I think—

THE COURT: I don't know that the Register can speak for the Judges. If you want to call Judge Wahlstrom and ask him whether or not he was available, why all right, I will let it go into the record. If you want to call Judge Atwood also, I will let that go into the record. But I don't know that the Register can speak for the Judges. Is that your objection?

MR. McKEON: That is the basis of my objection. This has already been adjudicated. It is not now open to the respondent. However, I would like to ask a few questions of the Register.

THE COURT: Well, I will hear it.

MR. PERMAN: I pray Your Honor's judgment. I have not finished.

MR. McKEON: Go ahead.

THE COURT: Go ahead; go ahead.

Q. Has Judge Wahlstrom been engaged wholly in Court since?

MR. McKEON: I object.

THE COURT: If you want anything along that line to go into the record you will have to call Judge Wahlstrom himself, as he is available.

MR. PERMAN: Respondent's objection and exception to that if Your Honor please.

THE COURT: All right.

Q. Have you seen Judge Wahlstrom this morning? A. I have.

MR. PERMAN: You may inquire.

Q. BY MR. McKEON: At the end of June was the Coe case marked for trial on the merits for the week of July 10th?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I think the records—I think he can relate whether or not the case was marked for trial.

MR. PERMAN: Exception.

WITNESS: It was marked for the week of July 10, that is correct.

Q. Was it in the end of June so ordered to be marked by Judge Wahlstrom?

MR. PERMAN: I pray Your Honor's judgment.

Q. And told to you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If he received such an order he may answer.

MR. PERMAN: Exception.

WITNESS: Well, I might answer the question this way: That the case was marked for the last week in June. Now to be frank I do not recollect Judge Wahlstrom having ordered me to put it in, but the case was put in for the week of July 10 in my own handwriting, as was the week of June 27. I might further add that I did not send out any notifications to any lawyers that I can recall saying that the case was marked for the 10th of July. I do believe that Judge Davis was to be up here in the month of July, but he was not available for that week, and as a result of a conference with Judge Atwood, Judge Stapleton was called by me to come down on the 10th of July, and I called Judge Stapleton to that effect.

Q. At that conference to which you have just referred was any case in particular mentioned—

MR. PERMAN: I object.

Q. As having been marked for trial July 10th?

MR. PERMAN: I object.

THE COURT: Well, I don't just understand the question; and I don't think it makes any difference.

MR. McKEON: I think that is true. I just tried to clarify the facts; that's all.

MR. PERMAN: No further questions.

THE COURT: I have no further questions. Are these papers in the case?

WITNESS: Yes, Your Honor.

THE COURT: Perhaps you had better leave them. Now it seems to me on the question of certification and on the question of your motion, one is headed 'A Motion to Vacate Certification, which is disallowed, and the other a Motion to revoke the assignment, which is dismissed. I rule that the matter has already been decided by two judges. Furthermore, it appears to me that on July 10th both counsel went on for a hearing on

various matters, as appears in the record, without any objection by either party, and it was my understanding then, and I think the record shows that it was the understanding of both counsel, I should say counsel on both sides, that the case had gone on for a hearing before me, and I rule that hearings had already commenced before me on July 10th on a proper certification, and that the question of whether the certification is a proper one has already been decided. That is all.

MR. PERMAN: The respondent objects and excepts to Your Honor's findings and rulings. And I think so that the entire matter may be clarified, the respondent moves that the transcript of the proceedings that were had before Your Honor on July 10th be made a part of the record here.

THE COURT: I don't think there is any question—which, July 10th?

MR. PERMAN: Yes.

THE COURT: I don't think there is any question but it is a part of the record.

MR. PERMAN: There is in my mind. I don't think the mere appearance of a stenographer on hearing on interlocutory matters necessarily makes it a part of the record.

THE COURT: Well, if it will help you any, I will rule that it is a part of the record.

MR. PERMAN: No objection to Your Honor's ruling that it be made a part of the record or that it is a part of the record.

THE COURT: What is the next matter?

MR. MCKEON: If we are ready to proceed, Your Honor, I should like to make an opening. I should like to review first, briefly, the major elements of the first trial. There were two cases tried, #9494 on the docket of this Court, which was a libel for divorce filed by the husband against the wife—the grounds set forth were cruel and abusive treatment and adultery. The other case was 131205, being a petition to determine whether the wife was living apart from him for justifiable cause. After a full hearing of the merits the husband's libel for divorce was dismissed, and on the same date, which was March 25th, 1942, the Court found that the petitioner was living apart for justifiable cause. In answer to her petition the husband had alleged by way of defense that the petitioner was guilty of cruel and abusive treatment and that if he had been guilty of wrong doing she had condoned it. I take it

therefore that it is settled—

THE COURT: Pardon me. In which decree was that?

MR. McKEON: That was in 131205. That was in answer to her petition for separate maintenance. I take it those decrees settled, first, that she was not guilty of cruel and abusive treatment nor of adultery, and that she had not condoned his misconduct or wrong doing, that that therefore to his own knowledge he had no cause for divorce either upon the ground of cruel and abusive treatment or upon the ground of desertion. With that knowledge, four months later, in July, he left her, went to Nevada and there filed a complaint for divorce upon the two grounds stated, which not only had ceased to exist as a matter of law, but to his own knowledge were no longer open to him to litigate. In the original trial here Mr. Coe and Miss Allen were both witnesses. Both testified that they had nothing but a business relationship between themselves, and the Court stated at the conclusion of the evidence that this claim made by them was nonsensical. I suggest that it was not only nonsensical—

MR. PERMAN: I pray Your Honor's judgment on this line of opening.

MR. McKEON: I am pointing to evidence we are going to offer to show was a . . . and fraud upon the Court.

MR. PERMAN: I pray Your Honor's judgment.

MR. McKEON: And we shall offer that evidence.

MR. PERMAN: Will you state where on the record the Court said it was nonsensical?

MR. McKEON: We will offer it in—

MR. PERMAN: I don't think it is properly an offer of proof.

MR. McKEON: I am not making an offer of proof.

MR. PERMAN: Or an opening.

THE COURT: I take it it is merely a statement of what he intends to show.

MR. McKEON: Miss Allen I think at that time was a correspondent before the Court; whether or not that is accurate, by pre-arrangement she was in Nevada on the date of the supposed decree involving her, and within fifteen minutes after the decree Mr. Coe and she were married by the Judge who made the decree, and forthwith they returned to the domicile of origin here in Worcester on or about the first day of October, said decree having been entered September 19 of 1942. In this house

referred to here they have not only lived together as husband and wife ever since, but Mr. Coe, as if to emphasize his domicile, has bought a new home here where these parties are now living together as husband and wife. It will appear that at or about the time of the marriage of the parties concerned here, Mr. Coe had inherited and was possessed of rising one-half a million dollars.

MR. PERMAN: Wait a minute. I pray Your Honor's judgment.

THE COURT: Well, I take it that there has been a petition for modification of the original decree, which was a decree for separate support. If we reach that, it would be material what the financial worth of, I will call him the husband because he was the husband at the time of the original decree, what the financial worth of the husband is today. Now we may or may not reach that point.

MR. PERMAN: We are here first and foremost, if Your Honor please, to determine, as the Supreme Court has ordered in its rescript to determine whether or not the petitioner can establish that there was an absence of domicile in Nevada, and secondly, if it can be established that there was not an absence of domicile in Nevada whether or not there was a violation of the latter provisions of Chapter 208, Section 39.

THE COURT: That is preliminary?

MR. PERMAN: Yes, Your Honor.

THE COURT: If that were all we were here to determine there wouldn't be any importance to the case at all. It is important that those two questions be decided only because, as I see it, there are pending other matters—a petition for contempt and a petition for modification of a decree. Now if those two matters were not pending here, the other two matters would be of no importance.

MR. McKEON: May I ask, Your Honor, to take the original rescript? (Mr. McKeon looks at rescript) First of all, there were several appeals, involving a petition for an increased allowance by the wife, a petition for contempt by the wife, a petition called, I believe, and filed by the husband, a petition to motify or vacate, and the plea in bar, that also filed by the husband. There were decrees made in the three cases. The rescript orders that decrees appealed from be reversed, so that they are reversed, and that these cases are to stand here in conformity with the opinion. Now to me it seems perfectly obvious that when the full Court wants to

make a rescript confined to a future hearing on domicile, or to one issue or to two issues, they are perfectly competent to do that. The only significance to the words "conformity with the opinion" is, of course, that anybody can act in violation of the law determined in this case, so that no one for example could file another motion to dismiss and attempt to have the case decided without a full hearing of evidence. We are here, I take it, to hear all three petitions in one. The two issues mentioned in the opinion are not stated to be issues which alone shall be heard upon the further trial, but merely that with reference to the second hearing it was important to note those two issues. And that the answers to these questions cannot be ascertained from the record because the petitioner was denied the right to introduce evidence with respect to them. I suggest that nowhere does the rescript or the opinion indicate that either party is limited to the trial and adjudication of any particular issue or issues, but that all the issues raised by these petitions and also by the plea in bar, so-called, are remanded here for a full and complete development of the evidence and the adjudication of the question thereto. I should like to continue stating what I expect to prove. We expect to prove, of course, that neither of these parties ever established a domicile or residence in Nevada; there was never any intention nor conduct on the part of the wife indicating that she ever intended to establish a domicile in Nevada. There was an attempt by the husband to induce the Nevada Court to take a jurisdiction which it did not possess; and I take it to be very clear law that no Court in any state has jurisdiction to sever the marital bond between two parties whose individual, separate domiciles were always in this state and whose matrimonial domicile was solely and exclusively in Massachusetts. We shall prove that the husband in bad faith left her to go to Nevada with an intention to evade the Massachusetts decrees in this Court of March 25, 1942, with full knowledge that those points he raised in Nevada had already been decided against him here. It was bad faith for him to file in Nevada his complaint alleging cruel and abusive treatment and desertion again on the ground that he knew they had been tried and decided against him. It was bad faith for him under the circumstances to take this method of attempting a collateral attack to invalidate the Massachusetts decrees. His attempt to establish a domicile in Nevada was a fraud upon the Court and upon the wife, and was a

necessary condition precedent to his procuring an order for service out there. It was bad faith to prearrange in Massachusetts for a marriage ceremony with Miss Allen, both of whom knew they could not marry here; and that that Nevada ceremony was a violation of our statute and was illegal and void in this Commonwealth. While it was a mere fraudulent pretense that he had abandoned his residence here, we shall show that he actually retained it in every particular.

THE COURT: May I interrupt?

MR. MCKEON: Yes, Your Honor.

THE COURT: Doesn't that marriage stand or fall on whether or not the divorce in Nevada is valid or void? And is it material if the divorce in Nevada is valid?

MR. MCKEON: I would think, first of all, Your Honor, that the divorce decree raises two questions: First, was it valid in Nevada; secondly, if we assume it to be valid in Nevada, is it valid here? I agree that the re-marriage stands or falls on the validity of the divorce in the aspects which I have stated. Its materiality would be, I suggest, that if void the respondent here has no obligations to Miss Allen, which ought to be taken into account with reference to—

THE COURT: Well, that would be very true, of course, if the first proceeding here was a divorce, that is, if the first Mrs. Coe had been granted a divorce and we were here on a modification of the divorce decree. Then it might be very material whether that next marriage was valid or not. Because if it was valid I would have to take into consideration his obligation to support his second wife.

MR. MCKEON: That is true. I think that is true here.

THE COURT: Where we are concerned with a decree of separate support it pre-supposes that the marriage or the condition of marriage continues and we wouldn't be taking into consideration the obligation to support another wife. It varies in that respect.

MR. MCKEON: Yes, I think that is true.

MR. PERMAN: That is, assuming the divorce was void in Nevada.

THE COURT: I think we would have to take into consideration whether the divorce was void in Nevada and whether it was void here. I think we would have to take both into consideration.

MR. PERMAN: That is a matter which may be ineffectual in Massa-

chusetts and still be effectual outside the bounds of Massachusetts. I don't suppose the Commonwealth of Massachusetts by any decree can make findings which have extra territorial effect.

MR. McKEON: There doesn't seem to be any dispute about that.

THE COURT: That of course is true.

MR. McKEON: Well, it seems to me that in a general way I have covered the picture which we intend to present here. Now are you ready, Your Honor, to go forward?

THE COURT: I think so. But shall we suspend now? It is near one o'clock. Do you want to start?

MR. FUSARO: No, it is all right, Your Honor.

MR. McKEON: Let's begin.

THE COURT: All right, I will hear up to one o'clock.

MR. PERMAN: May I ask how many counsel are to participate here?

MR. McKEON: There are two on your side.

THE COURT: Of course it is the rule in Massachusetts, I take it to be the rule throughout the Commonwealth that if two counsel are participating in a case and if one counsel begins to interrogate a witness that that counsel must continue, and that only one counsel may be permitted to interrogate a witness.

MR. PERMAN: All right.

THE COURT: But there is no doubt in my mind that counsel are familiar with that rule.

MARTIN VAN BUREN COE testified as follows:

Q. BY MR. FUSARO: What is your name? A. Martin Van Buren Coe.

THE COURT: I didn't get the middle name.

WITNESS: "V."

THE COURT: How do you spell that?

WITNESS: "V" and "B."

Q. You have not been sworn, have you? A. I have not.

MR. FUSARO: Will the other witness stand up to be sworn too, please? (Mr. and Mrs. Coe sworn by Court)

Q. Your name is Martin Van Buren Coe? A. Yes.

Q. You live where, Mr. Coe? A. 30 Forest Street.

Q. That is in Worcester? A. Yes.

Q. By the way, you have some impediment with your hearing, is that right? A. That is correct.

Q. But regardless of whether I talk loud or in a low tone, you can hear me if you see my lips, is that right? A. No, I rely on hearing.

Q. You rely on hearing. Do you hear me all right? A. I hear you.

Q. You read lips too, don't you? A. To some extent.

Q. Now if you have any difficulty, Sir, with hearing any of my questions, you call it to my attention before you answer, will you?

A. I will.

Q. By the way, you have heard me speak before, have you not?

A. I have.

Q. And I have questioned you before, so that you are familiar with who I am and with the method of my speaking? A. Not all of it.

Q. But enough, that right? A. No.

Q. No; I see. Well, how long have you been living at 30 Forest Street? A. About eight months.

Q. You recall when you moved into 30 Forest Street?

A. I think it was the latter part of '44.

Q. What's that? A. Must have been February of 1944.

Q. February of 1944? A. Yes.

Q. And do you own that house at 30 Forest Street?

A. The corporation owns it.

Q. It is in the name of a corporation? A. That's right.

Q. What is the name of the corporation?

A. Tarbox Realty Company.

Q. How do you spell that first name of the corporation?

A. T-a-r-b-o-x.

Q. Oh, Tarbox, that right? A. That's right.

Q. Tarbox Realty Company, that right? A. That's right.

Q. When I ask you a question I would like to have you answer it; you have been shaking your head.

THE COURT: "Corporation," I think he said before.

WITNESS: I meant "Company."

Q. Give us the full name now of this corporation which is the owner of this piece of real estate at 30 Forest Street.

A. Tarbox Realty Company.

Q. And you own that? A. I own it.

Q. Yes. Well, when did your corporation, that Tarbox Realty Company, purchase 30 Forest Street? A. That was in February of 1941.

Q. I see. And prior to moving over at 30 Forest Street where did you live? A. At 6 Boynton Street.

Q. 6 Boynton Street, Worcester, Massachusetts? A. Yes.

THE COURT: B-o-y-n-t-o-n?

MR. FUSARO: Yes, Your Honor.

THE COURT: Can you hear me all right?

WITNESS: Yes, Your Honor.

Q. How long prior to February of 1944 had you lived at 6 Boynton Street, Worcester, Massachusetts? A. That was November of 1942.

Q. What's that? A. November of 1942.

Q. Why you lived there for many years before November 1942, didn't you? A. No.

Q. What? A. No.

Q. You never did? A. No.

Q. You understand my question all right? A. I do.

Q. Why, didn't you live at 6 Boynton Street with your wife, Katherine C. Coe for a number of years prior to November of 1942?

A. Before then?

Q. Didn't you? A. Yes.

Q. Yes, and how many years had you lived at 6 Boynton Street?

A. That was up to March of 1942.

Q. My question is how long have you lived at 6 Boynton Street.

A. It was from 1934 to 1942.

Q. 1934 to 1942. Well, you didn't live at 6 Boynton Street from March 1942, that right? A. No.

Q. Do you understand that question? A. Yes.

Q. Were you the owner of 6 Boynton Street?

THE COURT: Do you want to suspend with that question "Didn't you live there from March 1942?" That was the last question.

(HEARING SUSPENDED UNTIL 2 P. M.)

P.M. SESSION

Q. BY MR. FUSARO (Continued)

Q. Mr. Coe, you owned 6 Boynton Street, didn't you? A. Yes.

Q. When did you acquire that property?

THE COURT: Was the answer "Yes"?

MR. FUSARO: Yes.

Q. Talk louder. When did you acquire 6 Boynton Street?

MR. PERMAN: I object.

THE COURT: What is the objection?

MR. PERMAN: The acquisition of 6 Boynton Street, if Your Honor please, is wholly immaterial as far as I can see to any of the issues involved here, particularly the preliminary issue as to whether or not there was a domicile in the state of Nevada.

THE COURT: The domicile in the state of Massachusetts might also be of some importance prior to going to Nevada, whether or not he acquired a domicile there. And this might be of some importance as shedding light on his domicile in Massachusetts. I suppose that is all. It couldn't go much beyond that. I will limit it to that, if you wish.

Q. What is your answer, Sir? A. What was the question?

(Stenographer reads aloud question)

WITNESS: 1932.

Q. And that property was purchased in your own name, that right?

A. Yes.

Q. By the way, how old are you? A. Forty-five.

Q. You were born in Worcester? A. Yes.

Q. And you lived here all your life?

MR. PERMAN: I pray Your Honor's judgment.

MR. MASON: He hasn't lived all his life yet.

Q. Well, where have you resided since you were born up until the time you married Katherine C. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

WITNESS: Worcester.

Q. Your answer is Worcester, that right? A. Yes.

Q. And you married Katherine C. Coe on what date?

A. Repeat the question.

Q. You married Katherine C. Coe on what date?

A. I think it was the month of May.

Q. Well, don't you know the day and the year? A. May 15, 1934.

Q. And you married in New York City? A. Yes.

Q. And following your marriage in New York City you came to live at 6 Boynton Street, that right? A. Yes.

Q. And you were living at 6 Boynton Street until the time that these proceedings were started here by your wife? A. No.

Q. No? A. No.

Q. Well, when your wife brought her petition for separate support weren't you living at 6 Boynton Street? A. No.

Q. Where were you living? A. New York.

Q. New York? But your home was at 6 Boynton Street wasn't it?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: What is your objection?

MR. PERMAN: Use of the word "home." The use of the word "home" is strictly a word that is a conclusion of law; it has one legal meaning and another lay meaning. I think it ought not to be used here in connection with any question that is directed to this witness.

THE COURT: I think the word "home" has such a definite meaning in the English language that counsel may ask a witness where his home was and he may answer what he considered his home or where he considered his home to be.

Q. You may answer, sir. A. What was your question?

(Stenographer reads aloud question)

WITNESS: No.

Q. You say it was not? A. No.

Q. You had given up your home here in Worcester; had you? A. Yes.

Q. And you went to live in New York when? A. In October 1940.

Q. And did you consider New York your home? A. Yes.

Q. You did? A. Yes.

Q. You understand my questions pretty well, don't you?

A. I think so.

Q. Yes. And do you say that from October 1940 you had given up your home at 6 Boynton Street? A. Yes.

Q. Do you recall your testimony this morning? A. Yes.

Q. Didn't you say that you resided at 6 Boynton Street until March 1942? A. I thought that—

Q. Did you say that? Do you have to look at your counsel?

MR. PERMAN: Well now—

MR. FUSARO: Well, I see what is going on.

MR. PERMAN: You see what is going on?

MR. FUSARO: Yes.

MR. PERMAN: Why don't you ask your question.

THE COURT: Well, there are two questions now.

Q. You did say this morning, did you not, that you resided at 6 Boynton Street until March 1942—didn't you say that? Your answer yes or no, sir. A. Yes.

Q. Now do you desire to change that? A. Yes.

Q. And what do you say now about 6 Boynton Street being your place of residence? A. I say it isn't my place of residence.

Q. Well, do you say now that it has never been your place of residence since October 1940? A. Yes.

Q. Well, that is not true, is it? A. That is true.

Q. Didn't you say before adjournment today that from November 1942 until February 1944 you lived there?

MR. PERMAN: I pray Your Honor's judgment.

Q. And that up to March 1942 you also lived there?

MR. PERMAN: I object to that.

THE COURT: You may have that if you split your question.

MR. FUSARO: Yes, Your Honor.

Q. You remember I asked you this morning where you resided before going to Forest Street—do you remember that question? A. Yes.

Q. And didn't you say you resided at 6 Boynton Street? A. Yes.

Q. From November 1942? A. No.

Q. You didn't say that. What did you say? A. I meant that it was—

Q. No. I ask you what did you say?

MR. PERMAN: Well, I think the witness ought to be given a chance to indicate what he meant.

THE COURT: He may later, but counsel has a right to that question. You may give him an opportunity later to ask him what he meant to say. Counsel is now asking him what he did say, not what he meant to say.

WITNESS: Will you repeat the question?

(Stenographer reads aloud question)

THE COURT: Well, I will explain it to you. The question implies what did you say this morning with reference to your residence.

WITNESS: I said it was 6 Boynton Street.

THE COURT: Until what time?

WITNESS: Until '42; until '42. But that was in error.

THE COURT: All right. Your witness.

Q. Well, do you recall I asked you where you live at the present time and you said 30 Forest Street—that right? A. That's right.

Q. And I asked you how long you had been living at 30 Forest Street, and you said since February of 1944—that right?

A. That's right.

Q. When I asked you prior to February 1944 where did you live, you said since November of 1942 you had lived at 6 Boynton Street—did you say that?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, he asked him if he said that. Now if he did not, of course he may say no, and if he did he may say yes.

MR. PERMAN: Well, I think if the question is going to be based now upon any testimony that preceded it ought to be predicated upon an accurate phrasing of what the question was and the response thereto.

MR. FUSARO: He said that, didn't he?

MR. MASON: No, he did not say that.

MR. FUSARO: I beg your pardon. I am perfectly willing to have the record read, your Honor.

THE COURT: All right. (Stenographer reads aloud same)

Q. Do you remember saying that this morning? A. Yes.

Q. Do you want to change that? A. Yes.

Q. And what do you say now?

A. I say now that I was living in New York City.

Q. New York City, I see. Do you say to this Court that from October 1940 until February of 1944 you lived in New York City? A. No.

Q. No, you don't say that? A. No.

Q. Well, will you tell his Honor where you had lived from October of 1940 to February of 1944?

MR. PERMAN: To February of 1944?

Q. Yes, until you moved over to Forest Street.

MR. PERMAN: I object; Your Honor.

THE COURT: The question is now: Will you tell the Court where you lived from what date?

MR. FUSARO: October 1940 to February 1944 when he says he moved into Forest Street residence.

THE COURT: Well, suppose we confine the question merely to where he lived from October of 1940 to February 1944.

MR. FUSARO: Yes, Your Honor.

THE COURT: Do you still object to that?

MR. PERMAN: I still object to that.

THE COURT: Well, he may have it.

MR. PERMAN: Exception.

THE COURT: All right.

Q. Your answer? A. From 1940 to 1942 I lived in New York City.

THE COURT: No. The question is where did you live from October 1940 until February 1944, and as I understand the question it means this: How many places—if you lived in more than one place state whether you lived in more than one place.

WITNESS: More than one place.

THE COURT: And give us the dates. I take it that is what you mean. Is that what you meant?

MR. FUSARO: Yes.

MR. PERMAN: And that is all subject to the respondent's exception.

WITNESS: From October 1940 I lived in New York until October of 1942.

THE COURT: From October 1940 to October 1942 in New York City?

WITNESS: No, I am in error there; I am in error.

THE COURT: All right.

WITNESS: From October of 1940 to, let's see, to April of 1942 I lived in New York City. From June 1942 I lived in Reno Nevada, until September of 1942. In September of 1942 I returned to New York City and stayed there a couple of days, and from there to Worcester until the present time.

Q. Well, when did you come back to Worcester from Nevada?

A. I did not come back to Worcester from Nevada.

Q. Oh, you did not come back to Worcester. Well, you want to tell the Court that from Nevada you stopped off in New York?

A. That's right.

Q. You stopped off at New York for how many days?

A. For three or four days.

Q. I see. And then you came to Worcester? A. Yes.

Q. And where do you say now that you came to live in Worcester after you had spent three or four days in New York?

A. What was that question again? (Stenographer reads question)

WITNESS: Well, I was still a resident of Nevada.

Q. Oh, you are still a resident of Nevada. So isn't it true that you came directly to 6 Boynton Street, sir? A. No.

Q. That is not so? A. No.

Q. Did you live at 6 Boynton Street in October of 1942?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. Yes.

Q. Yes, and you lived there in November of 1942, didn't you?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. Yes? A. Yes.

Q. And you lived there in December of 1942?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And that was your place of residence, sir, right up until you moved to the Forest Street address in February of 1944, and you know it, sir?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. You may answer. A. I was living there.

Q. Yes. And when I asked you this afternoon where your residence was from November 1942 until February of 1944 and your answer was New York City, you knew that you were not telling the fact, did you not?

A. No.

MR. PERMAN: I pray Your Honor's judgment.

Q. You say you don't even know it now?

THE COURT: Just a minute. You have two questions here now. (Stenographer reads aloud preceding question and answer)

MR. PERMAN: I move that answer be stricken out.

THE COURT: Your motion is over-ruled.

MR. PERMAN: Exception.

Q. Isn't it a fact, Mr. Coe, that prior to the time that you went to Reno, Nevada, that Worcester, Massachusetts, was considered by you your home residence and place of abode? A. No.

MR. PERMAN: I object.

Q. And didn't you say so, sir, in the legal documents filed in this very court, that Worcester, Massachusetts, was your place of residence?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I suppose as to that, the documents themselves speak for themselves.

MR. FUSARO: Yes, Your Honor. Well, I am very well acquainted with this witness and I will assure Your Honor this from my past experience with this man we are going to have quite a bit of this, and I have seen in the little while that I have been here what has been going on. I don't know whether Your Honor has observed that or not, but I will refer to it a little later.

MR. PERMAN: I move that the comments of the attorney be stricken from the record, and I think it unfair and untrue tactics that my brother—

MR. MCKEON: I move both counsels' remarks be stricken out.

THE COURT: Well, all right.

MR. PERMAN: I ask Your Honor to rule that the remarks be stricken from the record.

MR. MASON: He has already ruled.

MR. PERMAN: Your Honor has already ruled?

THE COURT: Yes.

Q. Well, 6 Boynton Street was your own home?

MR. MASON: What? Are you talking about ownership?

MR. PERMAN: Are you through?

MR. FUSARO: Yes.

MR. PERMAN: I object.

THE COURT: Well, that might be a little bit indefinite.

MR. FUSARO: I will rephrase it.

Q. You sold 6 Boynton Street at some time, did you? A. Yes.

Q. When did you sell it? A. June 1944, I believe.

Q. And that was after you were living at 30 Forest Street, that right? A. No.

Q. Well, since February 1944 have you been living at 30 Forest Street? A. Yes.

Q. I see. Right up to the present time? A. Yes.

Q. That is your home, is it not? A. No.

MR. PERMAN: I pray Your Honor's judgment.

Q. What's that?

MR. PERMAN: Wait a minute. I pray Your Honor's judgment.

THE COURT: You mean at the present time?

MR. FUSARO: Yes, Your Honor.

THE COURT: That is 30 Forest Street?

MR. FUSARO: Yes, Your Honor, since February 1944.

MR. PERMAN: He has testified he has been living there. I don't think any question should be directed beyond that point.

MR. FUSARO: May I make the suggestion that you made objection and His Honor will rule.

THE COURT: I will permit him to state his reasons.

MR. FUSARO: Yes. I had in mind what I know is going on. You may state whatever reasons you want.

THE COURT: We haven't any Rule 25 like the district courts have, here in Probate. Your objection is because he used the word "home"?

MR. PERMAN: That is right, Your Honor.

THE COURT: Now of course I have already ruled that I thought the word "home" had such a definite meaning in the English language that anyone of ordinary intelligence might properly say what he considered to be his home and what he considered not to be his home.

MR. PERMAN: I submit it has one meaning so far as a lay man is

concerned and another meaning so far its legal, technical meaning is concerned.

THE COURT: That may all be. But what a man considered his home might aid a tribunal in reaching a conclusion as to what was in fact his home; in other words, what a man might consider his home in the ordinary sense of the word "home." It has been described in prose and in poetry and the language is replete with definitions of the word "home."

MR. PERMAN: And it has been subject to a lot of legal decisions on which the best legal jurists have disagreed.

THE COURT: We might say that of many words in the English language. You might have the whole volume of words and phrases and say that a man could not answer any question pertaining to what he considered his definition of any word therein contained because it had been legally defined and was subject to a legal interpretation. So I don't think that your exception holds good, or rather your objection, I should say.

MR. PERMAN: Of course we are going pretty far afield here. The issue, the all important issue is the matter of domicile in Nevada.

THE COURT: Do you mean Mr. Fusaro, or you and I?

MR. PERMAN: I think so far as the question is concerned.

THE COURT: Well, suppose we conclude it by my ruling that he may answer.

MR. PERMAN: The respondent excepts to that.

Q. What is your answer, sir?

A. Well, I have forgotten the question; will you please read it?

(Stenographer reads question)

Q. 30 Forest Street is your home? **A.** No.

Q. Well, that is where you have been living? **A.** Yes.

Q. And you live there with somebody, do you? **A.** Yes.

Q. With whom? **A.** My wife.

Q. Your wife? What is her name? **A.** Her name is Mrs. Coe.

Q. Pardon? **A.** Mrs. Dawn Allen Coe.

Q. Her full name, please, what is it? **A.** Maiden name?

Q. Her full name. **A.** Mrs. Martin Van Buren Coe.

Q. Well, you refer to Dawn Allen, do you not? **A.** Yes.

Q. And I state it that way so there won't be any confusion.

THE COURT: What was the first name there?

MR. FUSARO: Dawn, D-a-w-n. That was her first name.

Q. That was her name prior to this marriage ceremony that you went through, is that right? A. Yes.

Q. We are on that subject now. Now by the way, when did you marry her? A. September 19, 1942.

Q. September 19, 1942, and where? A. At Carson City, at 4:15 P.M.

Q. Carson City, Nevada? A. Yes.

THE COURT: 4:30?

WITNESS: 4:15.

Q. And that's the very day that you obtained your divorce in Nevada?

MR. PERMAN: I pray Your Honor's judgment. One moment. I object to that. That is not an accurate statement.

MR. FUSARO: What do you say?

MR. PERMAN: He did not obtain the divorce; Katherine C. Coe obtained the divorce according to the records before you now.

MR. FUSARO: I'm sorry, Your Honor. I withdraw that question.

Q. That was the day you were divorced? A. Yes.

Q. And who married you? A. Judge Guild.

Q. And he is the Judge that entered the divorce decree? A. Yes.

THE COURT: What is the name?

MR. FUSARO: "Gill," Your Honor.

MR. PERMAN: G-u-i-l-d.

Q. Where is your home, sir?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor said you may answer. A. Shall I answer the question?

THE COURT: Yes.

WITNESS: Nevada.

Q. Well, where in Nevada? A. Reno.

Q. And where in Reno do you say? A. Del Monte Ranch.

Q. State it again, please. A. Del Monte Ranch.

Q. Reno, Nevada? A. Yes.

Q. And when did you first go there?

MR. PERMAN: Wait a minute. I object to that.

THE COURT: Well, I will hear your reasons.

MR. PERMAN: Yes, Your Honor. The entire matter of the proceedings in Nevada is before Your Honor by duly authenticated copy of the Nevada record which was filed and offered in evidence by the petitioner herself. That record includes amongst other things the testimony of this respondent. It is the position of the respondent that with reference to any issue of domicile, of bona fide residence in Nevada, there being no issue of identity of the parties involved here and there being no issue of the competency of the District Court of Nevada to enter a decree with the findings of the Nevada Court based upon the allegations of this respondent in the Nevada Court, the cross-complaint of the petitioner in Nevada under oath, coupled with the testimony of both the parties in the Nevada Court, and the participation by both parties, renders the decree of the Nevada Court on the issue of domicile a decree that is within the constitutional protection of the full faith and credit clause. For the same reasons the respondent contends that the issue of domicile in Nevada being a factual issue and an issue that was determined by the Nevada Court, and a Court competent to grant divorces, both parties appearing in the Nevada Court and appearing in the sense that they were physically present, and both parties testifying, makes that issue of jurisdiction over the subject matter res judicata between these parties and an issue that is not subject to collateral attack in these proceedings. The respondent further objects that the issue of domicile in the state of Nevada is not open to collateral attack in these proceedings for the reason that the petitioner, having under oath filed a cross-complaint in which there was admitted compliance with the residential requirements and the acquisition of a bona fide residence by the respondent in Nevada, cannot now be heard to take a position in the Massachusetts Court inconsistent with the position which he took in the Nevada Court. The respondent further objects on the ground that apart from the decree of divorce, the decree of the Nevada Court with reference to the property settlement contract entered into between the parties is a decree within the constitutional guaranty of the full faith and credit clause; and for the reasons already advanced the decree confirming, ratifying and adopting the property settlement contract is res judicata between the parties. The respondent further objects on the ground that apart from the Nevada

decree the property settlement contract entered into between these parties and valid under the laws of the state of Nevada, and one in which the parties mutually released all claims against the estate of each other, is a bar by the petitioner in these proceedings which are incidental to the . . . The issue, in substance, of domicile is one, first, that is not open to collateral attack and one that is a bar in view of all the proceedings in Nevada.

THE COURT: Well, Mr. Perman, it seems to me that the Supreme Court touched on each and every one of those.

MR. PERMAN: May I just add a little further. If Your Honor will examine the record and the plea in bar that was originally filed—

THE COURT: At least so the opinion states.

MR. PERMAN: I will be glad to go into that.

THE COURT: Are you tired standing? (Court address himself to witness) (Chair is placed for convenience of witness)

MR. PERMAN: The original plea in bar, if Your Honor please, you will find it in the record on Page 13.

THE COURT: That is your brief?

MR. PERMAN: That is my brief, that's right.

THE COURT: Yes, I have it.

MR. PERMAN: Paragraph 2: "That on September 19, 1942, the said petitioner was divorced from the defendant by the decree of the First Judicial District of the State of Nevada." That has been amended so as to include all the proceedings that took place in the state of Nevada. In its decision the Supreme Court in my opinion treated the issue as one that presented to it as a proposition of law whether a decree of divorce in and of itself and standing by itself would constitute a bar. Your Honor will note what I regard as being highly significant, namely, the testimony of the parties, the testimony of the respondent in the state of Nevada that he had an intention to make Nevada his home does not appear in this decision. Your Honor will note that although there is a reference to the contract that was executed between the parties and that the Supreme Court—and I quote from the language on Page 331—"the petitioner to release the respondent from all obligations for further support except as stated in the agreement," each release all claims against the other state, although that contract is referred to there is nothing in the

opinion which itself determines what legal effect is to be given to that contract nor any determination as to what effect that contract has with reference to these proceedings. The issue now before the Court in view of the amended plea in bar setting up the entire proceedings as contained in the petitioner's own exhibit of the Nevada proceedings, namely, Exhibit 2, raises those issues which I think were not raised and could not have been properly presented to the Supreme Judicial Court at the time that this was determined. Your Honor will note on Page 830 with reference to the offer of proof and insistence of petitioner's counsel, petitioner's counsel insisted he be given opportunity to introduce evidence establishing that the parties were never domiciled in Nevada and that its courts had no jurisdiction to grant divorce. That offer of proof might have been properly construed by the Court as proper proof . . . from Nevada District Court to enter a decree of divorce. That, as I understand it, is not one of the issues now. I submit that under the amended plea in bar and with the entire Nevada proceedings before Your Honor, there being the single issue of domicile as I understand it, there being nothing before the Court as to any issue between the parties of the competency of the Nevada Court to grant decree or grant that decree, that jurisdiction over the course of action is one that has been adjudicated and fully examined and is not now open to inquiry by collateral attacks.

THE COURT: Well, in view of this decision, I will have to disagree with you on that.

MR. PERMAN: Your Honor will note my exception.

THE COURT: Yes.

Q. You may be seated if you desire. When did you first go to Reno, Nevada? A. June 1942.

Q. What day in June 1942.

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: The question is rather vague, Your Honor.

THE COURT: Well, that may be, yes. Whether he arrived or left here?

MR. FUSARO: Well, we are talking about arriving.

Q. What day did you arrive in Reno, Nevada? A. June 10.

Q. June 10, 1942, that right? A. Right.

MR. PERMAN: This is all subject to the exception of the respondent.

THE COURT: You may have it.

MR. PERMAN: I object to that and except.

THE COURT: He may have it.

Q. And you took up residence at Del Monte Ranch, that right?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. Yes.

Q. Well now, Mr. Coe, you went to Nevada for the purpose of obtaining a divorce, that's right is it not?

MR. PERMAN: Wait a moment; I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. No.

Q. Well, didn't you file a libel for divorce in Reno, Nevada?

A. My attorney did in Reno.

Q. Well, your attorney did for you, did he not? A. Yes.

Q. And it is true, is it not, that you did go to Reno, Nevada for the purpose of having an attorney file a divorce for you?

MR. PERMAN: I object.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. That's right, is it not. His Honor said you may answer. A. Yes.

Q. All right. And it is true, is it not, Mr. Coe, that you were advised that before your attorney could file a divorce action for you, you would have to remain in Nevada for six weeks?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. That right? His Honor says you may answer.

MR. PERMAN: Did you get the question? Did you hear the question?

MR. FUSARO: Yes, he heard it; his answer is all right.

MR. PERMAN: Well, I want to know—

MR. FUSARO: Well, I don't like this interruption, Your Honor.

THE COURT: Well, I suppose counsel has right to ascertain whether

or not the witness has heard and understood the question.

MR. PERMAN: May I ask the witness what question was just asked him that he answered?

THE COURT: No. You may have the question repeated and the answer repeated, and he may be asked if that is the answer he intended to give to that question.

Q. Mr. Coe, just listen to the question I asked you and the answer you made. Listen to this question, Mr. Coe. (Stenographer reads aloud question).

MR. FUSARO: I thought he answered it; I will ask it again.

Q. What is your answer.

MR. PERMAN: What is the question?

THE COURT: Do you understand what question is now before you?

WITNESS: Not exactly. (Stenographer again reads aloud question)

Q. That's right, isn't it? A. Yes.

Q. And it is also true, is it not Mr. Coe, that forty-four days from the very day that you took up your residence in Nevada this divorce action was filed by you.

MR. PERMAN: I object.

THE COURT: If he knows he may answer that.

WITNESS: I don't know how many days.

Q. You don't know how many days. Well, it was on July 24, 1942, that your divorce action was started in Nevada—you know that, don't you?

MR. PERMAN: Wait a minute. I object to that. It isn't true.

MR. FUSARO: You say it isn't true?

MR. PERMAN: No. Filed July 27th, 1942.

MR. MCKEON: If I may interrupt, I would like to make a suggestion. There isn't any record of the Nevada proceedings yet before the Court.

MR. MASON: We are back to before we started.

THE COURT: Well, do you mean in this new proceeding that we have started, or do you mean the first proceeding?

MR. MCKEON: I mean in the proceedings that are now being heard there is no evidence as yet of the Nevada record.

THE COURT: That may be, but I don't suppose that would prevent its being offered later.

MR. MASON: Our plea in bar—

MR. MCKEON: I don't think you have a plea in bar; it is out.

MR. FUSARO: May I proceed?

MR. PERMAN: I think we ought to know what are proceeding on here.

MR. FUSARO: I think I ought to be allowed to ask the question regardless of what my opponents may say about it. We are prepared to prove that it was July 24, 1942 that this action was started, regardless—

THE COURT: If that is so, you may have the question.

MR. FUSARO: Yes, Your Honor.

Q. Then I want to show you this record here. Do you remember signing an affidavit for publication of summons subscribed and sworn to before me this 24th day of July 1942? A. I think I do.

Q. And do you recall that that is the day that your divorce action was started, sir?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Your objection is to the word "started"?

MR. PERMAN: Yes. It is all in the record.

MR. FUSARO: Well, this is from the record, sir.

MR. PERMAN: I know; but it is in there.

MR. FUSARO: I think I have the right to put the question.

THE COURT: I think you may ask him.

MR. PERMAN: Exception.

Q. What is your answer?

A. I would have to refer to my Nevada counsel; I cannot speak for him.

Q. Pardon?

A. I cannot speak for my Nevada counsel. He represented me.

Q. Well, before going to Nevada you knew that you would have to be a resident of Nevada for a period of six weeks before you could file an action for divorce?

MR. PERMAN: I object.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And that knowledge came to you from counsel in Worcester or in Nevada?

MR. PERMAN: Objection.

THE COURT: I think he may answer.

MR. PERMAN: Exception.

WITNESS: Came from Nevada counsel.

Q. And how long prior to that had you information with respect to the period of time that was required for you to be a resident of Nevada before divorce proceedings could be commenced?

MR. PERMAN: I object.

THE COURT: Well, I don't think I could answer that question.

MR. FUSARO: I'm sorry, Your Honor; that is my fault. Perhaps I haven't put it clearly.

Q. How long prior to June 10, 1942 had you information from Nevada counsel with respect to the period of time that was required for residence in Nevada for a divorce? A. I can't answer that.

MR. PERMAN: I object.

Q. You can't answer that. Well, when did you first learn about the required period of time in Nevada before you could bring a divorce proceeding?

MR. PERMAN: I object.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: That was up to my Nevada counsel.

THE COURT: I don't think he understood the question. The question was: When did you first learn that you would have to be a resident of Nevada for six weeks before filing?

WITNESS: I was in Reno sometime the latter part of June and that was when I communicated with counsel in Nevada, Reno, then he told me.

THE COURT: All right.

Q. Well, didn't you know before you went to Reno, Nevada what the period of time was for you to be a resident of Nevada before you could start your divorce action? A. No.

MR. PERMAN: I object.

Q. Pardon?

THE COURT: May I have the question? (Stenographer reads aloud question)

THE COURT: Question and answer may stand.

MR. PERMAN: Exception.

Q. Didn't you say that before you went to Reno, Nevada that you had information about the period of time that was required before you could start divorce proceedings? A. No.

Q. You say that is not so? A. No.

Q. Do you say that you did not have that information before you left for Reno, Nevada? A. No.

Q. You are sure now? A. Sure.

Q. That is, you went to Reno, Nevada for the purpose of getting a divorce but you did not know how long you had to be there, that right?

MR. PERMAN: I pray Your Honor's judgment.

MR. FUSARO: I object to two lawyers talking at the same time; it is confusing to me.

THE COURT: All right.

MR. PERMAN: The respondent objects to the question both as to form and substance.

THE COURT: Since it is rather a resume of previous testimony, I will allow it. There are two questions there, it is true; but if either one of them is not true he may answer it in the negative, because it is a resume of previous testimony.

MR. PERMAN: I think the witness—

MR. FUSARO: In order to make short the situation, I will withdraw that. I don't mean to put two questions. I will withdraw it, Your Honor.

Q. Well, you left Massachusetts for Nevada, did you not? A. No.

MR. PERMAN: I pray Your—

WITNESS: No.

Q. You didn't? A. No.

Q. Didn't you live here in Worcester until June 1942? A. No.

Q. Didn't you reside here in Worcester until June 1942? A. No.

Q. Wasn't your home at 6 Boynton Street up until the time you left for Nevada? A. No.

Q. Well, it was your home, wasn't it? A. No.

Q. It was not. That was the place where you lived, wasn't it?

A. Where I lived, yes.

Q. But if I call it your home you say it is not your home, but it is your place of residence where you lived—6 Boynton Street, I'm talking about 6 Boynton Street.

MR. PERMAN: I pray Your Honor's judgment. I think the question ought to be made clear as to the phrase—

THE COURT: That depends on his interpretation of it.

MR. PERMAN: The phrase "where you lived" might refer to a place where a man had lived at any time. It doesn't refer to any specific period of time.

THE COURT: As I remember, he said that he always lived there. Now counsel has asked him: You say you lived there but that is not your home. In other words, that is calling for his interpretation.

MR. PERMAN: Well, I'm not sure that I understood the question that way.

THE COURT: Am I right?

MR. FUSARO: Yes, Your Honor, that is exactly my question.

MR. PERMAN: Well, without that question being limited to a specific period of time, the respondent objects.

THE COURT: I suppose that means he was talking about June 1942?

MR. FUSARO: Yes, Your Honor.

THE COURT: Suppose we limit it to that; that is, for the present.

WITNESS: Repeat the question then.

Q. Well, prior to going to Nevada you lived at 6 Boynton Street, Worcester, Massachusetts? A. No.

Q. You didn't? A. No.

Q. Where did you live? A. New York.

Q. New York. Well, do you understand the question all right?

A. Yes.

Q. Where did you live in New York? A. 141 East 56th.

Q. 141 East 56th Street, New York City, is that right?

A. That's right.

THE COURT: 141 East 56th Street?

Q. Is that right? A. Yes.

Q. How long do you say prior to June 10, 1942, you had lived there?

A. Since April of 1940.

Q. Since April 1940. What is that? An apartment or a hotel?

A. Large apartment building.

Q. It is a large apartment building. And when did you first engage that apartment? A. October 1941—October 1940.

Q. Well, that address was the subject of the prior proceedings in this very Court, was it not? A. Yes.

Q. And that's the apartment where you were accused of living in adultery with Dawn Allen?

MR. PERMAN: I object to that.

THE COURT: Well, I don't suppose at this time whether he was guilty of adultery then is material, is it?

MR. FUSARO: Well, except to impeach his credibility now, if Your Honor please, as to where he lived; and I will have evidence with respect to this alleged New York residence. I do want to call to his attention at this time certain evidence that he gave at the prior hearing. Now if—

THE COURT: Well, he has stated that was the residence that was the subject of inquiry in the previous case. Doesn't that cover it?

MR. FUSARO: Very well, Your Honor.

THE COURT: Mr. Perman objects to the accusation of adultery, and perhaps it might be well to exclude that.

MR. PERMAN: I move the question be stricken from the record.

THE COURT: Well, it is excluded.

Q. Well, it is true, is it not, that you were asked some questions at the prior hearings on the petition for separate support brought by your wife with respect to this New York address?

MR. PERMAN: I object to that.

THE COURT: He may have that.

MR. PERMAN: Exception.

Q. What is your answer? You were asked about that at the prior proceedings? A. Well, counsel informed me.

Q. Well, I asked you questions about your New York address, did I not? A. Yes.

Q. You remember it all right? A. Sometime.

Q. And did you say in that prior proceeding that this New York address was your home, the place where you lived? A. Yes.

Q. You are sure about that? A. Sure.

Q. And that is from October 1940 right up until the time of the proceedings you were living at the New York address? A. Yes.

Q. Do you understand my question all right? (Witness nods head, indicating affirmative)

Q. And you say that at no time have you lived at 6 Boynton Street between October 1940 and June 10, 1942? A. Yes.

Q. That's what you say now? A. Yes.

Q. Well, you paid taxes on your property here in Worcester during all that period of time, did you not? A. Yes.

Q. You paid your poll tax here, did you not?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. Yes.

Q. And it is true, is it not, that 6 Boynton Street was not rented to anybody during all that period of time? A. No.

Q. All right. And it is true, is it not, that you had your personal belongings at 6 Boynton Street during that period of time?

A. Part of them.

Q. And it is true, is it not, that your wife, Katherine C. Coe, lived at 6 Boynton Street until January of 1941, when at the suggestion of Judge Atwood she moved out and you went in?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, there is too much in your question.

MR. FUSARO: Very well, Your Honor.

THE COURT: You may have the first part.

MR. FUSARO: I will withdraw it.

Q. It is true, is it not, that in a conference before Judge Atwood it was suggested by Judge Atwood that Katherine C. Coe move out of 6 Boynton Street so that you could go back in?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If he knows he may answer, and if as a result of that he went in it may appear.

Q. What is your answer? A. No.

Q. That is not so. Well, isn't it a fact that you were found at 6 Boynton Street in 1941?

MR. PERMAN: I object to that.

THE COURT: Well, that may be indefinite.

MR. FUSARO: Well, Your Honor, I will make it more specific.

Q. It is true, is it not, that you were there at 6 Boynton Street in

1941 and people saw you in that house at 6 Boynton Street?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, that is a double question too—you were there and people saw you. You may have both questions singly.

MR. PERMAN: Exception.

Q. You were there at 6 Boynton Street when you knew people saw you? His Honor says you may answer. A. Yes.

Q. Well, tell His Honor what you were doing in 1941 at 6 Boynton Street? A. I was looking at my real estate property.

Q. What else were you doing in 1941?

A. I was getting medical treatment in New York.

Q. Tell His Honor what else you were doing at 6 Boynton Street in 1941. A. I wasn't doing anything.

Q. Anything? A. No sir.

Q. Outside of looking at your real estate records, weren't you sleeping there? A. No.

Q. Didn't you sleep there? A. No.

Q. Some nights? A. No.

Q. Where did you sleep while in Worcester in 1941? A. #2.

Q. Oh, #2 Boynton Street; Oh, I see. You own #2 Boynton Street, do you? A. Yes.

Q. I see. And you had been sleeping at 2 Boynton Street how long?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. I did before she moved out.

THE COURT: No. The question was how long?

WITNESS: Several months before she moved out.

Q. Well, she moved out when?

THE COURT: I wonder if I understand correctly?

MR. PERMAN: I am sure I don't.

THE COURT: He is speaking now of #2 Boynton Street.

WITNESS: Well I lived in #2?

Q. And how long did you live at #2—that is 2 Boynton Street, that right? A. That's right.

Q. And your wife lived at 6 Boynton Street, that's what you want to

tell His Honor isn't it? Is that right, Mr. Coe, your wife lived at 6 Boynton Street while you lived at 2 Boynton Street? That's right isn't it?

A. Sometimes I did.

Q. Yes. That is, there came a time when you and your wife were in disagreement, and you went to live at 2 Boynton Street and she remained at 6 Boynton Street.

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. That's right, isn't it? His Honor said you may answer. A. Yes.

Q. Now you lived at 2 Boynton Street until your wife moved out of 6 Boynton Street, that right? A. That's right.

Q. And after your wife moved out of 6 Boynton Street you then went into 6 Boynton Street? A. No.

Q. What? A. No.

Q. You remained at 2 Boynton Street, did you?

A. When I came home from New York.

Q. Oh, when you came home from New York you still continued to live at 2 Boynton Street? A. I came weekends.

Q. Well, I ask you, sir, after you came back from New York and after the time that your wife moved out of 6 Boynton Street, did you go to 2 Boynton Street or did you go to 6 Boynton Street? A. I don't know.

Q. You don't know. But it is either one of those two places, that right? A. Yes.

Q. And that situation continued right up until the time of the hearing in this Court in March of 1942? A. I was in New York.

MR. PERMAN: Wait a minute. I pray Your Honor's judgment.

THE COURT: I don't think you can predicate that question upon the previous question because he said he didn't know. Then you said it continued.

MR. FUSARO: I got it differently.

THE COURT: My understanding is he was telling about how he came weekends; you asked him if he means from New York and he says yes; and you asked him if he went to 2 Boynton Street or 6 Boynton Street and he said he didn't know. And then you asked him if he moved into 2 Boynton Street, or 6 Boynton Street after his wife moved out, and he

said he didn't know. Then you said, "Well that situation continued,"—you see you are predicating your question upon something that he said he didn't know.

MR. FUSARO: Well, I think Your Honor is quite right about that . . .

THE COURT: And I think that was Mr. Perman's objection. Am I correct?

MR. PERMAN: Yes.

Q. After you went to New York—and it is true you went to New York for treatments? A. Yes.

Q. You would come home here for weekends, that's right isn't it?

A. Yes.

Q. And whether you spent the weekends at #2 or #6 Boynton Street here you are not sure? A. I'm not sure.

Q. But it was either of those two places? A. Yes.

Q. And I say that that situation of coming home here weekends and spending your weekends at either 2 or 6 Boynton Street continued until you went to Nevada? A. No.

Q. You say that is not so? A. No.

Q. Well, that was the situation at least up to the time of the hearing of this case in March of 1942? A. No.

Q. You say that is not so? A. No.

Q. Well, isn't it true that you testified in this very Court at the prior proceedings the only reason that you went to New York was to get treatments from a doctor by the name of Josephson? A. No.

Q. You say that is not so. Do you understand the question? A. Yes.

Q. Well, is it true that you were getting treatments from Dr. Josephson? A. Yes.

Q. And isn't it true that that is what you told the Court in the prior proceeding? A. Yes.

Q. Yes. Well, do you say that you maintained this New York address from October 1940 right up until June? A. No.

Q. You don't. Well, when do you say you gave up this New York address? A. October 1st, 1942.

Q. Gave it up October 1st, 1942? A. Yes.

Q. I see. But from October of 1940 up until October of 1942 you paid rent there every month? A. Yes.

Q. How much? A. \$100.

Q. \$100 a month? A. Yes.

Q. And you paid it every month from October 1940 right up until October 1942? A. Yes.

Q. Well, that isn't what you said in the previous case, is it?

MR. PERMAN: Well, I pray Your Honor's judgment.

THE COURT: Which previous case?

MR. FUSARO: Well, I talk about the hearing on the petition for separate support brought by Katherine C. Goe in which there was a hearing in this Court Room in March of 1942.

MR. PERMAN: That was concluded in March of '42; it did not proceed up and beyond October of 1942.

MR. FUSARO: He testified quite differently in that case about his New York residence.

THE COURT: I will have to sustain the objection if it was prior to October. You see, you said, you asked him and he said that he paid the rent each month until October of 1942, and then you said, "That isn't what you said in the previous hearing," or "That isn't what you said in the previous hearing, is it?" And then it turns out that the previous hearing was in March of 1942. Well, obviously—

MR. FUSARO: That is quite right. What I had in mind was up to the time of the hearing.

THE COURT: Because of course your question would call for the precise—

MR. FUSARO: I withdraw the other one.

Q. At the previous hearing in this case, that is, in March 1942, you were asked the purpose of your acquiring an apartment in New York—do you remember that? A. I do.

Q. And you stated that it was solely for the purpose of going to New York to be treated by a doctor and for no other purpose?

A. No other purposes.

Q. Well, I am asking you if that isn't the testimony you gave in March 1942? A. I don't know.

Q. And isn't it true that you stated in March 1942 that when you went to New York to be treated by Dr. Josephson you would come back and live at either 2 or 6 Boynton Street? A. No.

MR. PERMAN: I object.

Q. That is not so? A. No.

Q. All right. How long prior to March 1942 do you say that you have not been at either #2 or #6 Boynton Street? A. April 1940.

Q. Since April 1940. Do you understand my question? A. Yes.

Q. Well, do you say now that from February 1940 you had not been at 2 or 6 Boynton Street during any of the weekends up to March 1942?

A. No.

Q. You say that isn't so. Well, just think it over a little bit now.

A. I was living in New York.

Q. You were every day in New York, were you? A. Yes.

Q. And from April 1940 up until March 1942 at the time that the previous case was tried, you didn't live at all at either 2 or 6 Boynton Street? A. I commuted.

Q. Yes, you commuted all that period of time, isn't that right?

A. From April—

Q. Yes.

MR. PERMAN: Well, let him finish.

Q. From April until October? A. Yes.

Q. Well, what April are you talking about, and what October are you talking about? A. Both in 1940.

Q. Well, after October 1940 didn't you come back to Worcester?

A. Yes.

Q. You came home weekends? A. Yes.

Q. Now you told us about paying your taxes here and your poll tax. You kept your telephone here, did you not, at 6 Boynton Street?

A. Up to when? What year?

Q. What do you mean?

A. She was staying there; I paid the telephone.

Q. Yes, you paid the telephone bill right up until you disposed of your house in 1944? A. Yes.

Q. And the same situation with the electric light—the bills kept coming and you paid that up until 1944, until you disposed of the house?

A. Well, I didn't pay her expenses.

Q. I didn't ask you about her expenses; I am asking about the electric light bill at 6 Boynton Street. A. Yes.

Q. And that was the situation up until the time you sold the house in 1944? A. Yes.

Q. And the same with the heat there—what is it, an oil burner there?

A. Yes.

Q. You paid for all the oil that was delivered there right up until 1944?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. Yes.

Q. And whatever taxes, pardon me, whatever interest there was due on the mortgage you paid it, on 6 Boynton Street? A. Yes.

Q. You paid that every six months? A. Yes.

MR. PERMAN: Exception.

Q. Right up until 1944 when you disposed of it? A. Yes.

Q. Did you also pay on account of the principal a certain amount each quarter?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. Well, I—

Q. You didn't understand my question. Prior to the time the house was sold there was a mortgage on there, was there not? A. Yes.

Q. How much? A. I think it was \$3000.

Q. To what bank? A. Peoples Savings.

Q. Right here in Worcester? A. Yes.

Q. And were you required in addition to payment of the interest to make payments every quarter on the principal? A. Yes.

Q. And that you did up until the time you disposed of it in 1944?

A. Yes.

Q. And this house at 2 Boynton Street, is there a mortgage on that?

A. Yes.

Q. Is it in the same bank? A. Yes.

Q. For how much? A. \$2900 now.

Q. But it was originally how much? A. \$6500.

Q. And you have been paying every quarter—

THE COURT: Excuse me, on what property is that?

MR. FUBARO: 2 Boynton Street, Your Honor.

Q. I understand that was in your name too, at 2 Boynton Street?

A. Yes.

Q. And you were paying interest and a certain amount each quarter on the principal? A. Yes.

Q. And that you kept up right up until the present time? A. Yes.

Q. That right? A. Yes.

Q. And do you still own that house at 2 Boynton Street? A. Yes.

Q. And that house at 2 Boynton Street you maintain as your own private residence? A. No.

Q. What did you maintain it for? A. It is now rented.

Q. You rented it since when?

A. I think it was April of 1942 or '43, I don't know which.

Q. Well, it was in 1943, wasn't it, after this divorce, after this Reno divorce? A. Yes.

Q. So it would be April 1943?

A. No, it was before that; it was before that.

Q. Are you sure? A. I am sure.

Q. About April '42, April '43? A. Yes.

Q. What are the names of the people living there? A. Mr. Ward.

Q. And is he the man that you rented it to the first time you became the owner—probably that question is not clear. Since you have owned that property, he is the first man you ever rented it to? A. Yes.

Q. Up to the time you rented it to Mr. Ward, you considered it your private residence? A. No.

Q. What was it used for? A. Investment.

Q. What did you have there? What did you have at 2 Boynton Street? A. I had an office there.

Q. You had an office there; and you maintained your office there for how many years? A. Not so very many years.

Q. How many years had you maintained your office there prior to renting it out? A. I couldn't say to that.

Q. Well, what is your best judgment, sir? A. Well, I had two offices.

Q. I am talking about this one at 2 Boynton Street.

A. About one or two years.

Q. One or two years before the time you rented it, is that right?

A. Yes.

Q. And you also slept there sometimes? A. Yes.

Q. And you had your personal belongings there? A. Part of them.

Q. And you had your photographic equipment there? A. Yes.

Q. That's the place where you meet your friends socially? A. No.

Q. Well, didn't you meet people at 2 Boynton Street? A. Yes.

Q. Yes, weekly affairs? A. Not that sort.

Q. What's that? A. What do you mean, weekly affairs?

Q. Well, you had friends of yours come up there weekly at 2 Boynton Street?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If he had visitors there—I suppose he means in an innocent manner.

MR. PERMAN: Well, there is no reference to any specific time. None of these questions are directed to any specific time, any specific year or specific period.

THE COURT: I would say counsel was trying to find from the witness, trying to ascertain during what time—he is asking him how long prior to a certain date, and when, and so on; and I would say that he is having some difficulty.

Q. What is your answer? A. No.

Q. No to what? A. That I had weekly affairs there.

Q. Well, if they weren't weekly you had them there quite regularly, didn't you? Visitors? A. For what?

Q. Well, didn't you have games up there? A. Yes.

Q. Yes, and how often did you have games up there?

A. Once a week.

Q. Once a week, yes. And that was the situation right up until you rented it out? A. Yes.

Q. Yes. And you had an automobile, did you not, in 1940, '41 and '42? A. Yes.

Q. How many did you have, by the way? A. Two.

Q. They were registered in your name? A. Yes.

Q. And registered right here in Massachusetts?

A. One of them wasn't.

Q. Well, did you have one registered in your name in Massachusetts?

A. Yes.

Q. And what kind of a car was that, that you had registered in your name in Massachusetts for those years?

A. I believe that was the Buick.

Q. And you have been operating automobiles how long, Mr. Coe?

A. Since I was eighteen.

Q. And since you were eighteen and right up until your entry into the State of Nevada, all these automobiles, regardless of the number you had, were always registered here in Worcester, Massachusetts? A. No.

Q. You say that is not so. Well, you had an automobile registered in 1942 under our laws here in Massachusetts? A. It was.

Q. Yes, from 6 Boynton Street, that right? A. Yes.

Q. And it is true, is it not, that you had the other automobile registered from 6 Boynton Street for some part of 1942? A. No.

Q. You say that is not so. Well, under what state did you have that automobile registered? A. New York.

Q. New York? What kind a car was it? A. Buick.

Q. Was that the Buick that you had previously mentioned? Or did you have two Buicks? A. I had two Buicks.

Q. One registered under the laws of New York, that right? A. Yes.

Q. And the other registered under the laws of Massachusetts?

A. Yes.

Q. From 6 Boynton Street? A. Yes.

Q. But from the time that you went to live at 6 Boynton Street with Katherine C. Coe, your wife, you had four automobiles did you not?

A. I can't remember.

Q. Didn't you have two and your wife have two? A. She had one.

Q. Well, if she had one, did you have three? A. I don't know.

Q. You don't know? Well, wouldn't you know? A. No.

Q. You wouldn't. Well, when do you say is the first time you registered a car in New York or under the laws of New York?

THE COURT: I am going to suspend here.

(Hearing suspended until 10 A.M. Feb. 6, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FEBRUARY 12, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,
Commissioned Stenographer

FEBRUARY 6, 1945 HEARING

MARTIN V. B. COE, resuming stand, continued to testify as follows:

Q. BY MR. FUSARO: Mr. Coe, I show you your libel for divorce. That is your signature, is it not? A. Yes.

Q. And you knew that you had claimed your residence in Worcester at the time you filed this libel? A. No.

MR. PERMAN: I object.

THE COURT: I will admit it.

Q. Your answer is what? A. No.

Q. You did not. Well, what did you allege to be your residence when you filed your libel for divorce? A. In New York.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, of course the libel speaks for itself.

MR. FUSARO: I offer it for the purpose of showing—

THE COURT: Oh yes, you may offer it.

MR. FUSARO: I offer the libel, Your Honor. Of course I appreciate it is an original record, but I would like to read into this record the material portions of it.

MR. PERMAN: May I make this suggestion, if Your Honor please. There was a record in connection with the separate support suit that contained all the material in connection with those proceedings, and I suppose that it would be preferable to have adopted in this proceeding all the records that did so go up to the Supreme Judicial Court in that prior proceeding and that those records be incorporated and made a part of this record.

MR. FUSARO: Well, I should prefer, Your Honor, to offer as part of my case whatever records may be material and then Mr. Perman can do whatever he desires with respect to his case.

THE COURT: Well, I think that is a good procedure, and you can of course offer anything that you wish.

MR. PERMAN: I thought that by incorporation by reference it would avoid a cumbersome record in this proceeding.

THE COURT: Well, you may ask that anything be incorporated by reference.

MR. PERMAN: Well there is, Your Honor, a record that went up to Supreme Judicial Court on which the decision, I think it was 313 Massachusetts, was based.

THE COURT: You mean the first case?

MR. PERMAN: That's right, Your Honor, and we contend substantially all the material involved in those prior proceedings; and rather than have a cumbersome record here it was my thought that the record as contained in the Supreme Judicial Court proceedings be incorporated in these proceedings by reference. It is already before the Supreme Judicial Court, and it would, in my opinion, be encumbering this record unnecessarily. But I think it ought to be in there by reference and ought to be before Your Honor.

THE COURT: Everything that you say may be true, and I will consider it later. But as I understand it now, Mr. Fusaro seeks to introduce this for the purpose of showing that in bringing this libel and signing it he claimed Worcester as his residence.

MR. PERMAN: I think that libel speaks for itself; and may I say with reference to that libel that that probably is one of the papers that is not included in this record to the Supreme Court, so that with reference to that I offer no serious objection to its being made a part of this record here.

THE COURT: That may go in. (MARKED EXHIBIT 1)

MR. PERMAN: May it please Your Honor, with reference to the marking of the exhibits there are already several exhibits that have been filed and marked, and if this is going to be marked Exhibit 1 I think some further notation ought to be made with reference to it, so as not to confuse this exhibit with other exhibits which have already been introduced and already made a part of this cause.

THE COURT: I think that is a good suggestion, that it won't be confused with some other Exhibit 1.

MR. McKEON: May it please the Court, I urge again any exhibits in former trial will not be exhibits in the proceedings. I have no objection to marking this A, B or what not.

THE COURT: I don't understand that they are, but they would nevertheless have a marking that might be confusing.

MR. PERMAN: May I clear the understanding as to what Your Honor means with reference to no exhibits. I appreciate there have been no exhibits that have been introduced in the course of this hearing before Your Honor, but there are exhibits that have been introduced in this cause which is before Your Honor although not introduced since we commenced yesterday. They are in the record, they have been marked Exhibit 1 and Exhibit 2.

MR. FUSARO: What cause are you talking about?

MR. PERMAN: This case.

MR. FUSARO: When were they offered? I want to make sure that they are.

MR. PERMAN: On Page 14 you will find a note by the Register referring to the Index, Exhibit 1 sub-divided into complaint, affidavit, and so forth.

MR. FUSARO: Oh thank you very much; I can read it.

MR. PERMAN: And exhibit page 2 and page 14 refers to page 22, all of which appears on page 14.

MR. FUSARO: If Your Honor please, may I suggest if he desires any of these exhibits that were used at another hearing that he offer them. It would seem to me that anything that had gone in at some other time and place, if he wants to make it a part of this hearing he should offer it.

MR. McKEON: Perhaps to help out and give a bit of emphasis that these exhibits to which Mr. Perman has referred were used in the trial of one specific issue, namely, his original plea in bar which has been put out of the case by his own act—they were not used and are not applicable to any other issue. When that plea in bar went out of the case I suggest all the evidence, including the exhibit, applicable to that original plea in bar went out of the case and cannot be made part of this case except in the usual manner of introduction.

MR. PERMAN: I don't think there is any dispute the record will show it, and I think it was Your Honor's own action whereby the original plea

in bar was amended so that it conformed to the evidence that was introduced, namely, the exhibits that I referred to, which is common, customary and the usual practise to amend pleadings to conform to evidence that has been introduced. That plea in bar is still before Your Honor. Those exhibits are still before Your Honor, and the issues we are hearing, as I assume, are the issues which the Massachusetts Supreme Court has designated as being the issues involved.

THE COURT: It is my understanding that they have sent the case back for the rehearing, and as I understand that, an entirely new hearing in accordance of course with the decision, and I will rule that any exhibits that you wish to go in, you must reintroduce.

MR. PERMAN: The respondent objects and excepts to that ruling and insists that that changes the complete complexion of this cause because the exhibit relied on by the respondent was Exhibit #2 that was offered by the petitioner. It makes a tremendous amount of difference where evidence is offered by the petitioner and relied on by the respondent and then calls to be re-offered by the respondent. It changes the complexion of the cause entirely, and it was not the intention of the Supreme Judicial Court in remanding this case to vacate the proceedings that had been heard up to the point where the petitioner offered to go ahead. It was remanded for hearing on an offer of proof that was made by the petitioner that there was evidence with respect to lack of jurisdiction over the cause and that there was evidence with reference to the violation of the latter provision of Chapter 208, Section 39. That is the plain language, the plain import and the plain intent of the Supreme Judicial Court in its rescript.

MR. FUSARO: May I suggest, Your Honor, that everything that Mr. Perman stated after taking exception be stricken from the record?

THE COURT: Will you read that statement? (Stenographer reads the statement aloud)

THE COURT: Well, Mr. Fusaro, he might have it in a little different form. For instance, if he means by that to be heard further on it and to argue that I was wrong in my decision, I would permit counsel in any case if I made a ruling and counsel thought I was wrong and counsel said to me may I be heard on it, I would certainly say yes. I would permit counsel to point out where I was wrong in it, and if I was wrong I would correct

my statement if counsel convinced me. With that in mind, I would not strike it from the record. I will take it that that is what you meant by it?

MR. PERMAN: Yes, Your Honor.

THE COURT: You mean to say: May I be heard further on it. And you meant to point out to me why I might be wrong.

MR. PERMAN: Yes sir, that's it exactly. I had assumed that that is what Your Honor would understand to be so.

MR. MASON: May I make an observation, Your Honor?

THE COURT: Yes.

MR. MASON: It seems to me that this case has proceeded up to this point very clearly on the theory that this is a continuation of the hearing and not a hearing de novo.

MR. FUSARO: Oh no.

MR. MASON: Now, may I be heard. There is in this case an amended plea in bar, and in the normal course of procedure the plea in bar, the party setting up the plea in bar goes forward to present such evidence as he thinks proper for establishing that plea in bar. This case has not proceeded in that way. The case has proceeded on the theory that there is in evidence now a record of a Nevada divorce decree and the counsel for the petitioner has proceeded to cross examine the respondent on the basis of attacking the validity of the Nevada divorce decree. Now if that Nevada divorce decree is not in evidence, is not a part of this record, then these proceedings should terminate at this point and I would then move that all the evidence in this case be stricken from the record.

THE COURT: Well, it seems as though there is something to what he says, Mr. Fusaro. I had considered it in many respects a hearing de novo. But it is true you have proceeded with this witness to attack the Nevada divorce decree.

MR. FUSARO: Well, Your Honor, I have proceeded with this witness in view of the pleadings as I understand them and the issues raised by the pleadings, and of course when the time comes, if I am allowed to continue with this witness, we will be able to show the entire situation, and I can only do it by asking questions. I repeat again, if Your Honor please, that this is a new hearing entirely and is not based on anything that may have been introduced prior to going to the Supreme Court the second time. And when the time comes, we will offer or there will be

offered in evidence by some of these parties I am sure everything in connection with the case in view of the pleadings. I have proceeded on that theory. Yesterday we opened this case and we proceeded to introduce the evidence. There was no objection made by counsel representing the respondent that they desired to be heard on their plea first. We have gone ahead one entire day; we have gone ahead with evidence since seven minutes of one yesterday, and now they just complain. It seems to me I ought to be permitted to continue.

MR. MASON: May I say this is the first time it has been admitted in this hearing that this is not a continuation of a prior hearing and—

MR. FUSARO: What hearing are you referring to?

MR. MASON: The original hearing before Judge Wahlstrom, or rather the Supreme Court has indicated the petitioner should be permitted to introduce evidence which was excluded. And we are back in the same Court for the purpose of—

MR. FUSARO: I submit in the final analysis everything remains in Your Honor's discretion; but I don't think Your Honor is taking up a case that has been partly heard by another Judge so that Your Honor has only to hear a part of it. It seems to me that this is an entirely new hearing. Whatever evidence the parties desire to introduce before Your Honor, they must do it, and unless it is agreed, Your Honor, these other exhibits that were introduced at some hearing before Your Honor are not properly in this case.

THE COURT: Well, of course I feel, and I rule, that the procedure is within my discretion.

MR. PERMAN: Exception to that.

THE COURT: You may have an exception. I don't think there is any question in the law, so far as that is concerned, that the procedure is within the discretion of the Judge presiding over the trial and hearing it. And I have considered this a hearing de novo. But of course it must be based upon the of the Supreme Judicial Court.

MR. FUSARO: Yes, Your Honor, I agree to that.

THE COURT: And of course there are pleadings before the Court that were already in the case and the opinion of the Supreme Court is based on those pleadings. I think that anything that was introduced in evidence and that counsel wish in evidence again should be reintroduced.

But of course your interrogation of this witness has been based, that is, it has been an attack upon his claim to residence in Nevada and of course that is one of the questions for which the Supreme Judicial Court sent this case back to this Court for hearing.

MR. FUSARO: That is right.

THE COURT: Now it seems to me that being so, the evidence and exhibits bearing upon that should be in the case even if we have to suspend for the moment and get them in the case.

MR. FUSARO: Well, I may say this, if Your Honor please, that it is my intention before I get through with the respondent to offer in evidence the whole proceeding that took place in Nevada. It is my intention to offer in evidence through this respondent the alleged agreement that was entered into in Nevada. In other words, I am going to place before Your Honor the whole situation. We are not going to conceal any of it with respect to this divorce in Nevada. We want Your Honor to have a full, complete picture of the situation and circumstances surrounding it. He has raised it and we understand that when it is raised we have a right to call our opponents' client as a witness. I have only gone into a little bit of what I intend to go into; but I say again that—

THE COURT: May I interrupt now at this point?

MR. FUSARO: Yes.

THE COURT: If he has raised it then it must be before the Court. Of course in substance that is the point which Mr. Perman has raised. Mr. Perman, I understand you to raise this point: That it is wrong to proceed on the theory that it is in the case if it isn't in the case—is that it?

MR. PERMAN: That is absolutely right, Your Honor.

THE COURT: Well, I am afraid I will have to sustain him on that. It seems wrong in theory to proceed in that manner.

MR. FUSARO: I agree with Your Honor that he has raised it by his pleadings but I do not agree, and respectfully so if Your Honor please, that there is any evidence introduced by my adversary thus far because this man has been the first witness. We haven't agreed on any of the exhibits; we may later do it, but to this point we have not.

MR. MASON: May I suggest, Your Honor, that as far as the position of the respondent is concerned, we have insisted from the outstart of the hearings before Your Honor that these hearings are a continuation of

the original case and that the present hearing before Your Honor was in accordance with a mandate, rescript of the Supreme Judicial Court to permit the introduction of further evidence excluded in the original hearing, and our whole argument is based on the assignment of the case to Your Honor, and motion to vacate the assignment was based on that opposition. Now this has been the first time to my knowledge that Your Honor has ruled that this is a de novo proposition. Had that been stated at the outstart of the case that that was Your Honor's ruling we would have objected to the going forward by Mr. Fysaro on cross examination of this witness and would have insisted on going forward on our plea in bar, and would have requested the right for introduction of direct evidence on our plea in bar. I think it is improper and irregular to permit counsel to anticipate defense and cross examine the defense party when counsel have no reason to assume that proceeding is anything but continuation of the original hearing. Consequently I think the . . . has been prejudiced in this case at this moment because of the permission granted impliedly to the counsel for the petitioner to cross examine the adverse party at this state of the proceeding. Therefore, if Your Honor please, if Your Honor insists on ruling that this is a de novo hearing, because of that prejudice we move that the entire evidence of Mr. Coe or entire testimony of Mr. Coe be stricken from the record.

MR. MCKEON: May it please the Court, may I be heard?

THE COURT: Yes.

MR. MCKEON: It seems to me quite obvious that counsel for the respondent are not taking a full account of the factual situation. First, at the last hearing before Judge Wahlstrom, at that hearing there were two petitions before the Court by Mrs. Coe. There was a petition by Mr. Coe and there was an alleged plea in bar by Mr. Coe and a motion to dismiss by Mr. Coe. The respondent alone was permitted to offer evidence. The motion to dismiss by respondent was allowed. A decree was entered dismissing Mrs. Coe's petitions; a decree was entered allowing Mr. Coe's petition; and the full Court mandate is that all of those decrees were reversed, not just with reference to the plea in bar. So that the plain effect of the decrees reversed is that the petitions of Mrs. Coe and petitions of Mr. Coe are open in full equally as this supposed plea in bar. There is no indication in the decree of any limitation of hearing on evi-

dence upon any party. It is to be borne in mind that when the appeal went up the case itself stayed here; that the claim of the petitioner was that she had been denied a right to introduce evidence on her petitions or his petition in contradiction of evidence offered in support of the alleged plea in bar. So that the full Court was dealing not with the whole case in its opinion but merely with the issue that went before them and the opinion is to be read in that sense, and I suggest it cannot be read by anyone to mean that her petitions are now heard in full or that his petition is not open in full. In speaking of a de novo proceeding it can be the cause of confusion unless it be particularly defined. It is not, I suggest, a de novo proceeding in the sense that this is a continuation of what happened before Judge Wahlstrom. It is a de novo proceeding beginning with July 10. It does not go back to the trial including these exhibits before Judge Wahlstrom. It does not, first, by the rescript, it does not, secondly, by the later act of the respondent himself. If your Honor will consult the record as to what happened before you on July 10, you will find that the respondent himself urged that the original plea in bar must be eliminated. It must be stricken from the case. And there isn't any doubt that that is what happened. It was eliminated and this new thing, which I also urge is not a plea in bar, was entitled and called a substituted, not an amended, plea in bar. And one more thing I wanted to say. The evidence thus far in my view has made no reference whatsoever to be record in Nevada. It has had some relation to what happened there, but does not specifically and directly and immediately refer to the record as record—

MR. MASON: I think too it is very significant this is not a rescript for a new trial, which is the customary rescript demand by the Supreme Court in cases where new trials are ordered. These cases are to stand for hearing in conformity with the opinion which is language normally adopted for the further or continued hearing of a case in which hearing had already started.

MR. MCKEON: I disagree with that, if Your Honor please.

MR. MASON: Regardless of the status of the original plea in bar, if the original plea in bar was not heard specifically but a motion to dismiss in lieu of the plea in bar, then we submit that motion to dismiss . . . and we should have the right to go forward with evidence on it. I made

that last remark on the basis of Your Honor's ruling. The respondent still insisting that this is a continuation of the original hearing.

MR. MCKEON: May I refer to pages 19 and 20 of that record, Your Honor?

THE COURT: Yes. I was looking to find what you just quoted. Now what did you have in mind particularly?

MR. MCKEON: Perhaps I could find it. "Mr. Perman: The plea in bar should be eliminated so there won't be any question of double issue."

THE COURT: Well, this is what troubles me now. All your evidence so far seems to me to be an attack upon the claim of this witness that he had a valid residence in Nevada when he sought his divorce there. That being so, shouldn't their evidence supporting the plea in bar be in the case before this attack?

MR. FUBARO: Well, Your Honor, it is entirely a matter of discretion and I have in mind what happened yesterday. There was nothing said by either my associate or myself that would lead them to believe that there was a hearing started in this case before another Judge that was a part of this proceeding. On the other hand, we reiterated time and time again that the proceedings before another Judge had come to an end at the time that the Supreme Court decided this case. We are starting de novo.

THE COURT: Well, to end that I will so rule. But let's assume now that they allowed what happened to happen inadvertently, what occurred to happen inadvertently. Assuming that all the evidence supporting the plea in bar were in the case—if that did occur, I think they should be permitted to introduce everything that is necessary to support their plea in bar. I won't rule, however, that everything that has happened be stricken from the record. What I would do is suspend at this point and permit them to introduce it.

MR. FUBARO: Well, if Your Honor please, if you feel that that should be done, of course—

THE COURT: It would seem to me to be the logical way to proceed.

MR. FUBARO: The method of proceeding, and entirely within Your Honor's discretion. Might I suggest that I be permitted to finish with this witness and then if Your Honor desires to have those former records introduced I think we can probably save a great deal of time by agreeing on a lot.

THE COURT: Well, perhaps that is what Mr. Perman intended when he spoke of exhibits that were in this record.

MR. FURABO: Is that what you intended, Mr. Perman?

MR. PERMAN: I'm sorry; my attention was distracted.

THE COURT: I said that probably was what you intended when you suggested that all the exhibits in the record be considered as introduced.

MR. PERMAN: I had, if Your Honor please, first of all assumed that everything that had transpired before Judge Wahlstrom was before Your Honor. I had assumed that on the basis of the ordinary, normal customary practise of litigation. I had assumed that because of my understanding as to what the meaning and intent and sense of the decision of the Supreme Judicial Court was. It was my consistent position throughout, as is indicated by my allegations contained in the various motions with reference to the certification, and it was my assumption as we commenced before Your Honor. Insofar as any ruling by Your Honor is concerned that the exhibits and the proceedings that took place before Judge Wahlstrom are not before Your Honor, the respondent insists on his objections and exceptions.

THE COURT: Well, I am suspending now to allow you to introduce it, so why take an exception?

MR. PERMAN: As I have indicated, if Your Honor please, there is a great difference; there have been exhibits offered by both parties here at the prior proceedings. Exhibit 1 was offered by the respondent; exhibit 2 was offered by the petitioner. Throughout—and if Your Honor will read my brief you will observe that I had relied upon Exhibit 2. If Your Honor will read my substituted plea in bar I think I referred to Exhibit 2. If Your Honor will go back to my objections to evidence with respect to domicile I think you will there find my reference to Exhibit 2. There is a great difference between proceeding on the case and reliance upon Exhibit 2, and—

THE COURT: Now wait just a minute. You say if I will read your brief—and your brief is fifty-nine pages long; and then you go on as if I could read fifty-nine pages.

MR. PERMAN: Perhaps I can just refer to the page. Page 18 I think is the first reference, beginning "It is in the light of the foregoing principles," "and that the respondent contends that the evidence of the peti-

tioner as disclosed by her exhibit of the Nevada proceedings." Then a little before that Your Honor will observe on page 10, about the middle of the first paragraph my position there is: (Reads aloud same).

THE COURT: Well, let me ask you this: What do you want in the record now by way of exhibits? Can't we shorten this whole controversy by getting in the record what you would like to have in by way of exhibits? Mr. Fusaro, as I remember his last words were: "Perhaps we can agree upon them."

MR. MASON: I think Mr. Perman's suggestion that the record could be introduced at that time was based on his original assumption that this was a continued hearing. Now Your Honor has ruled this is not a continued hearing but a de novo hearing. That changes the whole aspect of the case as far as the respondent is concerned, so that I don't think now from the respondent's standpoint it is a matter of any agreement what to introduce into the record, but what disposition should be made of the case up to this point. Therefore if Your Honor rules that this is not a continued hearing we have already indicated that we object and except to that ruling. We have again moved that the entire evidence submitted by the petitioner up to this point be stricken from the record in view of that change in procedure, with reference to which the respondent feels he has been prejudiced. Now I think Your Honor has ruled that you would deny that motion to strike from the record the evidence introduced up to this point.

THE COURT: I have.

MR. MASON: The respondent wishes to object and except to that ruling.

THE COURT: All right.

MR. MCKEON: Your query as to exhibits remains unanswered.

THE COURT: That is true.

MR. PERMAN: I think Your Honor's question was with reference to what my position would be with reference to some possible agreement as to what exhibits ought to be considered before—

MR. MCKEON: No.

THE COURT: Let's go back to the beginning of this. This whole discussion arose because you suggested that all exhibits be considered as introduced, if I may call that to your attention.

MR. MASON: May I interpose one statement: That the original discussion arose with reference to the numbering of the exhibits. That's how it started.

THE COURT: Yes.

MR. PERMAN: Started with the libel for divorce, Exhibit 1.

MR. MCKEON: I want to now press the demand that the respondent state and offer whatever exhibits he thinks ought to be—

THE COURT: You don't have to press it because I am pressing it.

MR. MCKEON: Well I am doing my little bit.

MR. MASON: It seems to me Your Honor is making a request of the respondent at this time which does not seem to be in the regular course of procedure. Normally the respondent introduces his evidence when he puts in his case and not during the process of cross examination of a witness. I don't think that we should be requested at this time, with due deference to Your Honor's suggestion, to make any such decision.

THE COURT: If that stands, then I will permit Mr. Fusaro to continue.

MR. PERMAN: The respondent objects and excepts to continuance of examination.

THE COURT: Let's settle this once and for all. I gave you an opportunity to do something—I gave you an opportunity to do what was requested to have done. You took an exception to something and I gave you an opportunity to proceed. Now you have refused to proceed. I told Mr. Fusaro to proceed, and you took an exception to that.

MR. MASON: Well, I think—

THE COURT: It reminds of an Aesop's fable.

MR. MASON: The original discussion arose, if Your Honor please, with reference to the numbering of the exhibits, when Mr. Fusaro introduced the libel for divorce; it was Mr. Perman's suggestion that since there were already two exhibits in the case that the numbers be allocated to new exhibits so that there would be no conflict. It seems to me he suggested that for convenience, since Mr. Fusaro was offering the libel that the entire record in the previous case at the previous hearing be introduced at this time as part of the record. It was at that time, for the first time Your Honor ruled that this was not a continuation of the original hearing but a proceeding de novo, which changed the entire com-

plexion of the case from the standpoint of the respondent.

THE COURT: That is not the first time that the expression has been used in this hearing.

MR. MCKEON: May I inquire of counsel when he talks about a continued hearing if he refers back to the first trial before Judge Wahlstrom?

MR. PERMAN: What first trial before Judge Wahlstrom?

MR. MCKEON: The first trial.

MR. FUSARO: What is your answer?

MR. MASON: My answer to that question for the purposes of this discussion is that in accordance with the rescript of the Supreme Court this case is a continuation of the hearing before Judge Wahlstrom on which the last decision of the Supreme Court was made.

MR. MCKEON: Now if I understand you at last, we have arrived at the situation where the first trial before Judge Wahlstrom is not being here continued.

MR. PERMAN: That is not so.

THE COURT: This is not a continuation of any hearing. To my mind it would be ridiculous to consider it as a continuation of a hearing where I did not hear it and I do not know just what was said. I don't know just what evidence was introduced. I know no more than is in that record. Of course this hearing must be based upon the decision of the Supreme Court, as I have already stated, and in conducting this hearing we must be guided entirely by that decision. And as I stated, if anything happened here because of a misunderstanding on your part, I suspended at this point to allow you to correct that by introducing any exhibits that you wish to introduce.

MR. MASON: We claim we have been prejudiced. We are now committed, because of Your Honor's ruling, to allowing the petitioner to proceed irregularly, it seems to me, as he has already started and we have no control over that situation. I don't think we should be asked to attempt to remedy that irregularity when we have been already prejudiced.

THE COURT: I am offering you that opportunity.

MR. MASON: Specifically may I ask what opportunity you are granting us at this time?

THE COURT: I am granting you opportunity to introduce any evidence that you may think necessary, and furthermore I will grant you

opportunity to introduce any evidence you think is necessary to support the exhibits.

MR. MASON: May we have an opportunity to confer about that?

THE COURT: Yes, we will take a recess.

MR. McKEON: Let me say one more thing: It seems to me it is quite obvious it is part of my prima facie issue that the wife of the respondent has the right to open and close and prove our prima facie case.

THE COURT: That is right. That of course would precede any evidence that they introduce by way of plea in bar.

MR. McKEON: That is correct.

THE COURT: But of course we did go forward with this witness with a great deal of evidence which tended to attack the theory of the plea in bar.

MR. McKEON: I agree with that, because necessarily we are—

MR. MASON: Why the simple thing to make it a prima facie case would be for Mr. McKeon to put the petitioner on the stand and ask a few questions.

MR. McKEON: This is regular and ordinary and usual.

THE COURT: You did have an opportunity, as I see it, unless you were laboring under a misapprehension—and if you were, I will permit you now, that is, after they introduce a prima facie case I will permit you to go forward. Now I will say this: If you introduce no evidence that would make the testimony that I have heard for more than half a day relevant, then I would hear you again on striking it from the record.

MR. MASON: Well, Your Honor was going to give us an opportunity to confer.

THE COURT: Yes.

(RECESS: HEARING RESUMED)

MR. MASON: If Your Honor please, as I understand it Your Honor has offered us the opportunity to proceed at this stage with evidence in support of the amended plea in bar, and without waiving any objection or exceptions already taken to Your Honor's rulings up to this point, we shall proceed in accordance with Your Honor's suggestion.

THE COURT: All right, except of course with the limitation that Mr. McKeon brought out that it is their right to prove a prima facie case.

MR. PERMAN: We will admit the marriage.

MR. MCKEON: That doesn't mean the allegation.

MR. PERMAN: We will admit the marriage took place between Martin Van Buren Coe, the respondent, and Katherine C. Coe, the petitioner, on the 16th day of May 1934. We will admit that on the 25th day of March 1942 a decree was entered in Probate Court for Worcester County adjudging that the petitioner was living apart from the respondent for justifiable cause, and that under that decree she was awarded the sum of \$35 per week. It seems to me, if Your Honor please, so far as the evidence of a prima facie case is concerned, that constitutes that prima facie case that they have referred to.

THE COURT: Well, not quite, possibly, because isn't there a petition for contempt and isn't there a petition for modification.

MR. FUSARO: Surely.

MR. PERMAN: That all, if Your Honor please, relates to the original decree of March 25, 1942, and I think both petitions specifically refer to and are predicated upon the decree of March 24, 1942. I don't think there is any question about that at all.

MR. FUSARO: Do you rest on that?

MR. MASON: Except we want to point out that the respondent's position is that if the plea in bar is sustained that of course terminates all issues in the case.

MR. MCKEON: Well, as a matter of law that is not so.

MR. MASON: That is for the Court, I think, to decide.

MR. FUSARO: Are you resting with that?

MR. PERMAN: We are merely making a statement in conformity with the suggestion that was made by the Court before this recess was taken.

MR. MCKEON: Let me state one thing further: That if you do go further we shall contend that you have waived any prior objections.

MR. MASON: In view of that statement I think that is a condition which counsel has no right to impose on parties in the case, but it is entirely within the province of the Court.

THE COURT: He said "we shall contend."

MR. FUSARO: That's right.

MR. MASON: The other side apparently don't want to make any contentions here.

THE COURT: He didn't say he would rule; he merely said he would contend.

MR. PERMAN: In view of the statement made by counsel as to the plea in bar and what effect it would have with reference to disposing of these matters in its entirety, I direct Your Honor's attention to page 65 of the record (referring to Supreme Court record).

THE COURT: There is one thing, I am determined that we won't reach an impasse here where no one can go forward.

MR. PERMAN: Your Honor will note statement made by me as follows: "May I make one suggestion with reference to our standing as I have understood it, and that is (etc., reading from record) To which there were no objections or exceptions.

MR. MCKEON: Well, there are now. We will settle that.

MR. FURARO: Do you rest?

MR. PERMAN: I think it must be clear, Your Honor, that counsel cannot and ought not to be permitted by virtue of a certification or request made to another Judge to take a position at this hearing inconsistent and contradictory to the position that was taken by him at the prior hearing.

MR. MCKEON: You mean the prior hearing before Judge Wahlstrom?

MR. PERMAN: Oh, you know what hearing I am talking about.

MR. MCKEON: I am asking for the record. Are you talking about the prior hearing before Judge Stapleton to which you have just referred?

MR. PERMAN: I was not addressing you.

MR. MCKEON: I am addressing you. Do you care to answer that or not?

MR. PERMAN: I don't care to answer.

THE COURT: Well, Mr. Perman, when you call my attention to page 65 are you calling my attention to the statement of Mr. McKeon: "I am agreeable to have the respondent go forward," is that what you wanted to call my attention to?

MR. PERMAN: No, I wanted to call your attention specifically to the third sentence, beginning with the third sentence beyond that.

THE COURT: That is your statement?

MR. PERMAN: That's right; and to the statement made by the Court following that; together with the absence in the record of any objection or exception then taken by counsel for the petitioner to that course and agreement.

MR. MCKEON: The petitioner had no agreement, if I may say so, no objection to that course for the purposes of that hearing which was that the single issue would be heard, namely, as to the validity of the Nevada proceedings; and that only. And all the rest of what happened was a violation by the respondent of that agreement in advance not to raise any other or different issues, but to have that and that alone tried. And there was no objection on the part of the petitioner for the purposes of that hearing as to that agreed single issue to having all the other petitions abide by the result or determination of that single issue. But I suggest it is wholly improper to ask that that special agreement be interpreted to mean a perpetual bar to trying all the appropriate issues here.

THE COURT: As I said, I do not intend that we should reach an impasse where nobody could go forward and where the case cannot proceed, and if we continue that is just about what it would result in as a practical matter. So let's all be practical. Now I suspended, to go back to where we started from I suspended so that you might introduce any exhibits that you thought were necessary so that your matters would be before the Court. Now I will state again I will give you that opportunity.

MR. PERMAN: That is, do I understand that that opportunity is subject to the right of the petitioner to continue with examination of the respondent in the manner and form in which that examination has been conducted; or do I understand that to mean that is an opportunity for the respondent to go ahead on the issues that those exhibits would raise in connection with his plea in bar?

THE COURT: Well, I'm not going to make any ruling in advance on what the manner and form of the examination of the witness is going to be, because of course it would be impossible for me to have in mind what questions might be asked and what answers might be given.

MR. MASON: May I make one statement, if Your Honor please, towards simplifying the problem a little bit?

THE COURT: Yes.

MR. MASON: The respondent has on file a plea in bar in its defense of this action. The respondent's position to date has been that evidence in connection with that plea in bar is already in record in this case when introduced in the prior hearing before Judge Wahlstrom. Your Honor

has ruled that this is a hearing de novo and that the exhibits in that prior hearing are not exhibits in this case at this point.

THE COURT: Not yet.

MR. MASON: To which we except and insist on our exception. Now, if Your Honor please, if Your Honor wishes us to proceed at this point on our plea in bar we shall be very glad to do so without waiving any objections and exceptions.

MR. MCKEON: Of course you can make all the attempt you want to save exceptions irregularly, but you cannot foreclose the petitioner from claiming that when you make your choice you accept legal responsibility to follow that choice.

MR. MASON: In many respects the procedure in the Court Room is under the direction and control of the trial Judge, and I again repeat—and I am not interested in my brother's position in this respect—if Your Honor desires us to proceed at this point with evidence on our plea in bar we shall be very glad to so.

MR. MCKEON: Without any—

MR. MASON: I have already stated our position, subject to our objections and exceptions.

MR. FURARO: May I state Your Honor has given counsel for the respondent in this case ample opportunity to present what they desire to have in evidence in the early part of the hearing this morning, and fully two and a half hours have elapsed since that opportunity was first given; and it seems to me that these attorneys representing the respondent ought to be required by the Court to state now whether they desire to proceed forward in accordance with that opportunity or not, so that the record will be clear.

MR. MASON: It isn't a question of our desire, it is a question of the Court's desire in my opinion, because the petitioner has seen fit to go forward with evidence in this case and has not completed that initial procedure. Now the Court during the course of that presentation of the petitioner's case I think voluntarily made the suggestion that we might introduce in this case certain evidence in connection with our plea in bar.

MR. FURARO: That is not so.

MR. MASON: I think the procedure here is entirely within the control of the Court. We have no right to proceed until one party has com-

pleted certain examinations I assume with the permission of the Court. Now we have no control of the situation. Normally we would present evidence in its usual course. If we are to present evidence outside the usual course I think it should be under the direction of the Court.

THE COURT: Well, as I said two or three times, this whole thing arose because Mr. Perman raised a question about certain exhibits being in evidence and I said they were not. And thinking that he might feel that his interests were prejudiced in some way, I gave him an opportunity to introduce now any exhibits that he might wish; because I pointed out Mr. McKeon raised a question that it was their right to prove a prima facie case. I cannot take that away from him; no question about that. Well, go ahead and prove your prima facie case; then we will listen to the plea in bar later.

MR. FURARO: Very well. Exhibit 1, if Your Honor please, is the libel for divorce in case 9494 brought by Martin V. B. Coe, in which he alleges that he is a resident of Worcester, and it was filed in this Court on October 18, 1941. The libel also alleges that they last lived together at 6 Boynton Street in said Worcester, and the grounds for the divorce are cruel and abusive treatment. And I offer, if Your Honor please, a motion to amend, filed by Mr. Coe, which was allowed by the Court.

MR. PERMAN: Are you offering that?

MR. FURARO: Yes.

MR. PERMAN: I object to it.

THE COURT: You object to his offer of the motion to amend?

MR. PERMAN: Yes, Your Honor.

THE COURT: Objection over-ruled, and it may be admitted.

MR. PERMAN: Exception. (MARKED EXHIBIT 2)

MR. FURARO: Exhibit 2, if Your Honor please, is a motion of Martin V. B. Coe to amend his libel by alleging adultery, which was filed and allowed by the Court on December 31, 1941.

MARTIN V.B. COE, resuming stand, continued to testify as follows:

Q. BY MR. FURARO (Continued): This is your signature, is it not?

A. Yes.

Q. Your signature is attached to Exhibit 2, on this motion to amend the libel? **A. Let me examine that.**

Q. I ask you, is that your signature? **A. Let me examine that.**

Q. I asked you a question.

MR. MASON: Just a moment.

THE COURT: He may look at it.

MR. FUSARO: May I have him acknowledge whether that is his signature or not?

THE COURT: He asked to examine the signature; I think he has a right to that.

WITNESS: At that time I was in New York.

MR. FUSARO: I object.

THE COURT: That part of his answer is stricken from the record.

Q. That is your signature? A. Yes.

Q. Now do want to examine it any further? A. No.

Q. That is, the signature on this motion to amend, Exhibit 2, is yours?

A. As far as I know.

Q. Well, it is, isn't it? A. I suppose so.

Q. Well, it is, isn't it? A. Yes.

MR. FUSARO: If Your Honor please, I offer this document in case 9494, the return of the deputy sheriff (handing paper to Court).

MR. PERMAN (after looking at paper): Do you offer it?

MR. FUSARO: Certainly.

MR. PERMAN: Objection.

THE COURT: I will exclude it. My reason for excluding it is: If it is offered and there is an objection I would have to ask you to produce the sheriff who made the return.

MR. FUSARO: Well, I immediately thought about that; but may I ask properly another question?

THE COURT: Yes.

Q. Did you receive a copy of this citation?

A. I think my counsel received that.

MR. FUSARO: I ask that be stricken out.

Q. Did you receive a copy of that citation? A. I'm not sure.

Q. Well, would you say you didn't?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, he may have that question.

MR. PERMAN: Exception.

Q. What is your answer? A. I would say yes and no.

Q. You would say yes and no. And if you received it, you received it at 6 Boynton Street—is that the way you want to leave it?

MR. PERMAN: I object.

THE COURT: He may have that.

MR. PERMAN: Exception.

WITNESS: I wouldn't know.

Q. You wouldn't know. Well you received it in Worcester anyway, didn't you? A. I may.

Q. Yes, if you received copy of this citation it was received in Worcester August 8, 1943? A. August 1943? I may have.

Q. Well, you had stationery printed giving your home as 6 Boynton Street, did you not?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. That's right, isn't it?

A. I may have used that, but I was not at 6 Boynton Street.

MR. FUSARO: Well, I ask that answer be stricken from the record, Your Honor.

THE COURT: I didn't hear it. (Stenographer reads same)

THE COURT: The answer is stricken.

Q. Isn't it right, Mr. Coe, that you did have stationery giving 6 Boynton Street as your home? A. No.

MR. PERMAN: Objection.

THE COURT: What is the objection?

MR. PERMAN: First, Your Honor, that question has no application to any period of time. It may have extended 15 or 20 years prior to anything that was involved here.

THE COURT: Well, that may be so.

MR. PERMAN: I think it ought to be confined to some definite period of time and particularly to the particular issues involved here. And beyond that, if I understand it, the—

THE COURT: That would only go to its value in any event.

MR. PERMAN: Yes. And I object further on the ground that if this interrogation is for the purpose of establishing a prima facie case that there was a marriage relationship between the petitioner and

respondent for the purpose of supporting the petition for contempt and modification, that evidence has no relevancy to that issue on the prima facie case.

THE COURT: Well, if he shows the time he may have it, or if he includes that in his question.

Q. Did you have stationery with 6 Boynton Street as your home, in 1940? A. No. In what year?

Q. 1940.

MR. PERMAN: Objection to that.

THE COURT: You mean did you have stationery printed in 1940?

MR. FURARO: No, pardon me.

Q. Did you have stationery and on that stationery 6 Boynton Street was given as your home which you used in 1940?

MR. PERMAN: I object to that, as to form and substance.

THE COURT: He may have it for what it is worth.

MR. PERMAN: Exception.

Q. What is your answer? A. When was that?

Q. Any time in 1940. A. I couldn't answer that question.

Q. Why? A. Because it does not specify any month.

Q. Did you use any letter in 1941 in which you gave 6 Boynton as your home?

MR. PERMAN: Objection.

THE COURT: I think the question might be a little bit clearer.

MR. FURARO: Yes, Your Honor.

Q. Well, did you send out any mail in 1941 giving 6 Boynton Street as your home?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What do you say to that? A. I don't remember.

Q. You don't remember. Did you send out any mail in 1942 giving 6 Boynton Street as your home?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. I was in New York City.

Q. I didn't ask you where you were.

MR. FUSARO: I ask if that answer may be stricken?

THE COURT: It may be.

Q. What is your answer A. I couldn't say.

Q. And isn't it true, sir, that you don't want to remember whether or not you sent out mail from Worcester giving Worcester as your home?

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. I never give Worcester as my home.

Q. You never did— from the years '41, '42, '43, '44 you never gave 6 Boynton Street as your home?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. MASON: Just about four questions there.

THE COURT: Well, suppose you eliminate that by asking him year by year.

MR. FUSARO: Yes, Your Honor.

Q. In 1941 did you send out any mail giving Worcester as your home?

MR. PERMAN: Objection.

THE COURT: He may have that.

MR. PERMAN: Exception.

Q. What is your answer? A. I was in New York City.

MR. FUSARO: I ask to have that stricken.

THE COURT: Yes, that may be stricken.

Q. You answer the question. A. I don't remember.

Q. Did you send out any mail in 1942 giving Worcester as your home?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I don't remember.

Q. Did you send out any mail in 1943 giving Worcester as your home?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. I don't remember?

Q. Now you understand these questions, sir, don't you?

A. To the best of my knowledge and belief.

Q. "And don't you remember, sir, that you sent out letters from Boynton Street? A. No.

Q. In those years? You don't remember that. Well, you had the stationery printed giving a post office address as your home here in Worcester, did you not?

MR. PERMAN: I pray Your Honor's judgment.

MR. McKEON: As a mailing address.

MR. FUSARO: I withdraw the question.

Q. You had given a post office address here in Worcester on your stationery?

MR. PERMAN: I object.

THE COURT: Well, you see he admitted being born in Worcester I believe, and living in Worcester for a great many years. And the issue is whether he lived in Worcester in certain years. So if the question has any value, if the question is to have any value it should state the time.

MR. FUSARO: Yes, Your Honor.

Q. You had a post office address here in Worcester in 1940, did you not? A. Yes.

Q. You had one in 1941?

THE COURT: Excuse me. May I call your attention to the time.
(Hearing suspended until 2 P.M.)

P.M. SESSION

Q. Mr. Coe, you have paid your poll taxes in Worcester for the years '41, '42, '43 and '44 haven't you?

MR. PERMAN: I object.

THE COURT: Well, suppose you ask him.

Q. It is true, is it not, that you have paid your poll tax to the city of Worcester for 1944?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And it is true, is it not, that you paid your poll tax to the city of Worcester for 1943?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And it is true that you have paid your poll tax in the city of Worcester for 1942?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And the same for the year 1941?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And it is true, is it not, Mr. Coe, that you have been a registered voter in the city of Worcester since 1940?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

THE COURT: You mean by that to date?

MR. FUSARO: Yes, Your Honor.

THE COURT: Did you hear what I said to Mr. Fusaro?

WITNESS: No.

THE COURT: Well, I was including in the question to date, from 1940 to date.

WITNESS: 1940 to date?

THE COURT: Yes.

WITNESS: I haven't voted.

THE COURT: No, that wasn't the question. Whether or not you were a registered voter?

WITNESS: I don't know.

Q. What's that? A. I don't know.

Q. Do you really mean that, Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He is merely asking him to reaffirm it or to deny it.

MR. PERMAN: Apart from other objections, the matter of whether a man is a registered voter is a matter of record anyway, and I suppose the record would be the best proof.

MR. FUSARO: He has to register, of course, to get on the voting list.

THE COURT: Not here. In New York City. One remains on the voting list here unless for some reason they take you off, or unless you request that your name be removed.

MR. PERMAN: It has been my experience that the failure to exercise the right to franchise is one of the grounds they use for striking the name of a voter from the list of voters. Now I don't know precisely how many many years is required before that is done.

THE COURT: I don't either.

MR. PERMAN: But there is a lapse of years required before that is done. I am pretty sure at least so far as Worcester is concerned.

THE COURT: Well, I think perhaps many times they take voters off the list they haven't any right to take off and others they leave on that should be removed.

MR. PERMAN: Well, I think that is purely a matter of record and the record will disclose whether or not this man registered and whether he is still on the list of voters, and if he was taken off, just when he was taken off and what year.

MR. FUSARO: Of course I have in mind that according to our procedure here the assessors send their assistant assessors around to find out whether certain citizens are citizens of Worcester and if they—

THE COURT: Of course I couldn't take judicial notice of any such thing as that, and I don't think that I would allow proof of it as having any bearing.

MR. FUSARO: Very well, Your Honor.

THE COURT: I permitted you to ask him if he was a registered voter, and if he knows he may answer that.

MR. PERMAN: Subject to my exception, of course.

Q. You know that you are a registered voter in Worcester?

A. I don't know.

Q. Did you ever vote in Worcester? A. Not since 1940.

Q. You haven't since 1940. You say that you did not vote in 1941?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I don't recollect.

Q. Well, you know, don't you, Mr. Coe, that you voted in 1941?

MR. PERMAN: I object.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I don't know.

Q. You mean you don't remember or what?

A. I haven't kept track of it.

Q. But you know you voted in 1942?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I did not vote.

Q. You know that? A. I am positive.

Q. I am talking about the city of Worcester now. Did you vote in Worcester in 1943?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: No.

Q. Did you vote in Worcester in 1944?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: No.

Q. And you have a bank account in some bank in Worcester?

A. Yes.

Q. What bank?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. You may answer. A. Guaranty Bank & Trust Company.

Q. You have had an account in the Guaranty Bank & Trust Co. in Worcester how long, Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Since 1941.

Q. Since 1941. And prior to 1941 you had an account in some other bank in Worcester, did you?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. I would like to have you look at that. Do you recognize that envelope, sir? A. Yes.

Q. That is your hand writing up here in the upper left hand corner? A. Yes.

MR. FUSARO: I offer it.

MR. PERMAN: Respondent objects.

THE COURT: It may be admitted.

MR. PERMAN: Exception. (MARKED EXHIBIT 3)

MR. FUSARO: Exhibit 3, Your Honor, is an envelope addressed to Mrs. Katherine C. Coe, 32 Howland Terrace, Worcester, Mass. And then the address was interlined and the address written in ink: 128 West Liberty Court, c/o Sutherland, Reno, Nevada. In the upper left hand corner appears the following writing: M. V. B. Coe, Box 910, City. It appears to have been mailed out from Worcester and the first postmark is October 1st, 1942.

Q. Box 910 was maintained by you for how long?

MR. PERMAN: I object.

THE COURT: You mean post office box?

MR. FUSARO: Yes, Your Honor, this post office box mentioned in Exhibit 3.

THE COURT: You may have it.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. Yes.

Q. Well, for how long have you maintained this post office box 910?

A. Three years.

Q. Starting with 1941? A. Before that.

Q. How long before that?

THE COURT: From when to when.

WITNESS: I think it was from '35.

Q. From 1935 up until when? A. To now.

Q. To now; all right. Now I show you this envelope, sir. Have you looked it over and inspected it, Mr. Coe?

A. I didn't put this writing on the envelope.

Q. Well, I didn't ask you that.

MR. FUSARO: I ask that be stricken from the record, Your Honor.

WITNESS: I didn't put that on the envelope.

THE COURT: Wait a minute. I missed your first question there?

Q. Did you inspect the envelope?

THE COURT: And the only answer to that is either yes or no.

WITNESS: Yes.

Q. Did you send out that envelope? A. Yes.

MR. FUSARO: I offer it.

MR. PERMAN: Objection.

THE COURT: Admitted.

MR. PERMAN: Exception. (MARKED EXHIBIT 4)

MR. FUSARO: This Exhibit 4, if Your Honor please, is an envelope addressed to Mrs. Katherine C. Coe, 32 Howland Terrace, Worcester, Mass., and then in the upper left hand corner is typed M. V. B. Coe, 6 Boynton Street; and the writing on the lower left hand corner, if Your Honor please, isn't something that was in. We will have evidence to explain that, if that is what your objection is.

MR. PERMAN: That is one objection to it.

MR. FUSARO: In the left hand corner, "1—\$35 check November 20, 1942," was not written by this man; it was written by Mrs. Coe, the petitioner.

THE COURT: Suppose you let him explain, if he wanted to explain.

Q. This you did not write in the left lower corner of the envelope, what appears in handwriting—you did not write that? A. No.

THE COURT: And you have no knowledge how it got on there?

WITNESS: Have what?

THE COURT: Knowledge of how it got on there. Do you know how that got on there?

WITNESS: I did not write that.

THE COURT: You didn't write it and you don't know how it got on there?

WITNESS: No.

MR. FUSARO: We will explain that later on. I didn't offer it for anything written in longhand. It is simply an envelope he addressed and sent through the mail. I understood him to say he had done that.

THE COURT: Yes.

MR. MCKEON: When was that mailed?

THE COURT: November 19, 1942, it is postmarked.

Q. I show you a letter and ask you to look it over. (handing same to witness) Have you inspected it? A. Yes, I inspected it.

Q. What is that? A. That is an envelope.

Q. That you sent through the mail?

MR. PERMAN: I object to that.

THE COURT: He may answer whether or not he sent it through the mail.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. Yes.

MR. FUSARO: I offer it. I offer it, if Your Honor please, to show— I offer it on the issue of some evidence of domicile here. I am not offering it for the contents of the letter or anything like that. As a matter of fact, if there is a letter in it I am perfectly willing to take it out, if you object to it. The whole thing is there; it bears his signature and everything.

MR. PERMAN: I haven't seen it as yet.

MR. FUSARO: I am not offering it for the contents, but just simply for what it shows there, that he had stationery printed showing Worcester, Massachusetts on it.

MR. PERMAN: Is that the purpose of offering it?

MR. FUSARO: On the issue as I have explained it.

MR. PERMAN: I object to it.

THE COURT: And you say that the letter inside has nothing to do—

MR. FUSARO: No. (Removes letter from envelope).

THE COURT: He isn't offering that.

MR. FUSARO: No, but they want to see it (handing letter to Mr. Perman and Mr. Mason).

THE COURT: Well, suppose you just consider the envelope now.

MR. PERMAN: I object to it.

MR. FUSARO: I offer it, Your Honor.

THE COURT: It may be admitted.

MR. PERMAN: Exception. (MARKED EXHIBIT 5)

MR. FUSARO: Exhibit 5 shows envelope addressed to Mrs. Lucy Schneider, 6 Boynton Street, and on the reverse side is the following: M. V. B. Coe, Worcester, Mass., with postmark March 7, 1941 from the Worcester Post Office.

Q. By the way, Mrs. Lucy Schneider was one of the maids that you had engaged? A. What's that?

Q. Mrs. Schneider was one of the maids engaged by you? A. No.

Q. Well, what was her position at 6 Boynton Street?

A. I don't know.

Q. You don't know. Did you ever hear that name before?

A. I have heard the name.

Q. Well, who is she? A. It is her maid.

Q. Her maid. You were paying for her maid? A. Certainly.

Q. Now you know that Mrs. Schneider remained there after your wife left?

MR. PERMAN: I object to that.

THE COURT: I don't see how—

MR. PERMAN: We are getting pretty far afield now, Your Honor.

MR. FUSARO: I would like to make an explanation, if I may.

THE COURT: All right.

MR. FUSARO: I am not sure about the date—I think it was about January 8, 1941, as a result of a conference before Judge Atwood Mrs. Coe left 6 Boynton Street and Lucy Schneider continued on there as a maid, if Your Honor please. She continued on at his request and not our request.

MR. PERMAN: Well, when do you say she continued on to?

MR. FUSARO: I don't know. I will find out.

MR. PERMAN: Mr. Fusaro, if you are going to state in reference to what transpired at another proceeding it can be done with more accuracy by referring to the record. The record indicates—

MR. FUSARO: You don't mind if I ask the question and let His Honor pass on it and then let's see?

THE COURT: I think there was a question.

MR. PERMAN: At the time when the decree was made with reference to the vacating by Katherine C. Coe, that is a decree that is in this Probate Court.

THE COURT: If you can show that Mrs. Schneider—is it Miss or Mrs?—whichever she is, remained there at that address and in his employ to take care of that house, you may have it.

MR. PERMAN: Objection and exception.

THE COURT: Is that your—

MR. FUSARO: Yes sir.

Q. Is that your signature, sir? A. Yes.

Q. That is the letter that was sent in this envelope, Exhibit 5, and which I just pulled out of there? A. Yes.

MR. FUSARO: I offer that letter, if Your Honor please.

MR. PERMAN: I object to it.

THE COURT: Is it your contention that Mrs. Schneider was a maid at 6 Boynton Street?

MR. FUSARO: Yes, except he has qualified it by stating that she was Mrs. Coe's maid; and I will show later on that Mrs. Coe left 6 Boynton Street in January in accordance with the suggestion of Judge Atwood.

THE COURT: All right.

MR. PERMAN: What date did you say?

MR. FUSARO: I'm not sure of the exact date, but I think it was January 8. What date is it? My attention has been called to the record here that says the 8th of March. I will reframe it. I withdraw those questions.

THE COURT: All right.

Q. Well, this letter was written by you from 2 Boynton Street, is that right? A. Yes.

Q. And you addressed it to Mrs. Lucy Schneider at 6 Boynton Street, that's right, isn't it? A. Yes.

Q. And up to March 12th you would pay Mrs. Schneider for services rendered as nurse to your wife, is that right?

MR. PERMAN: Are you quoting the letter? I object to that.

MR. FUSARO: I am not quoting any letter. I am asking a question, sir.

MR. PERMAN: Well, I am objecting to it.

THE COURT: You would pay her, or did pay her? I don't think the question is quite clear.

MR. FUSARO: Very well, Your Honor!

Q. Well, you knew your wife had Lucy Schneider as maid up to a certain time? A. What that letter specified.

Q. A. I would no longer be responsible for her services.

Q. After what date?

A. After March 12. I had to give her one week's notice.

Q. After March 12, 1942? A. '41.

Q. Yes, pardon me; '41. And do you recall now how long you had been at 2 Boynton Street? A. Been there weekends as I stated.

Q. And that place at 2 Boynton Street you say was the place that you considered your business address?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: I object to that. I don't think; I don't think it is phrasing what the witness said.

THE COURT: I don't take it he is asking him what he said, that is, asking him what he said now.

Q. You may answer.

MR. PERMAN: Exception.

WITNESS: I didn't consider that my business residence.

Q. What did you consider 2 Boynton Street to be?

A. As a place to stay.

Q. And you have been the owner of 2 Boynton Street for how long?

A. Will you repeat the question, please?

Q. You have been the owner of 2 Boynton Street how long?

A. Will you repeat the question right here? (Mr. Fusaro having changed his position)

MR. MASON: May I make the observation that in view of this man's impediment in hearing it is very difficult for him to follow any question while anybody is in motion.

THE COURT: That may be so. But he may put the question from where he is now if he insists.

MR. MASON: Very well; but I just request that courtesy of Mr. Fusaro.

Q. I will remain in this position. Do you hear me all right?

A. So far.

Q. You had owned 2 Boynton Street how long up to March of 1941?

A. I owned the house?

Q. Yes. A. 1934.

Q. Yes. Now outside of 2 Boynton Street and 6 Boynton Street, Worcester, Massachusetts, did you own any other real estate in Worcester up to 1941? A. Yes.

Q. Where? A. Auburn.

Q. Well, that is a suburb immediately adjoining Worcester as you go south? A. Repeat that again, please.

Q. Well, it is the next town out from Worcester?

A. As far as I know.

Q. What did you own in Auburn. A. A tract of land.

Q. How many acres? A. Three.

Q. Did you have any other real estate up to 1941 besides these three parcels? A. No.

Q. And you had the three acres in Auburn how long up to 1941? A. 1930.

Q. I see. Was that just land, or were there any buildings on it? A. Just land.

Q. Did you dispose of that land? A. No.

Q. It is still in your name? A. Yes.

Q. Now I think you have told us that you sold 2 Boynton Street when?

A. I didn't sell 2 Boynton Street.

Q. You still own it? A. Yes.

Q. Well, it is #6 that you sold? A. Yes.

Q. Now Cr. Coe, when you went to Nevada and arrived there June 10, 1942, did you always live at the Del Monte farm up to the date that the divorce decree was entered?

MR. PERMAN: Objection.

THE COURT: I think that is clear enough so that he may answer it.

MR. PERMAN: Exception.

Q. You may answer.

THE COURT: Do you understand the question?

WITNESS: Not very clear.

Q. Very well.

THE COURT: Is that the date he went there?

Q. Is that the date you gave us yesterday, June 10th?

A. June 10th?. Yes.

Q. What is your answer to this question? A. Yes.

Q. All right. And at no time, Mr. Coe, were you away from Nevada during that period of time, is that right? A. No.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

THE COURT: You included "during that time"?

MR. FUSARO: Yes, that period of time.

Q. When did you leave Nevada following the day the divorce decree was entered?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Two days later.

Q. And from Nevada you said yesterday you went to New York, is that right. A. That's right.

Q. And you stayed in New York a period of three or four days?

A. No.

Q. Well, is that what you said yesterday? You will have to answer, please. You shake your head. You will have to answer.

A. I stayed in New York until October.

Q. How many days did you stay in New York?

A. I stayed about ten days.

Q. Well, how long did it take you to travel from Reno to New York?

A. About six days.

Q. Having in mind that the divorce decree was entered on September 19 and that you left two days later, and that it took six days to arrive in New York, do you say now you stayed ten days in New York? A. No.

Q. Three or four days, that right? A. Five days, I think.

Q. Five days you think. Well, you are back in Worcester by October 1? A. Yes.

Q. And you were on a honeymoon at that time when you went to New York?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. That's right, isn't it? A. If you consider that so.

THE COURT: No; whether or not you considered it so.

WITNESS: Well, yes.

Q. And when you arrived in Worcester about October 1, 1942, you moved directly into 6 Boynton Street with Dawn Allen?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, there may be a question, of course, whether that was her right name or not.

Q. Well, isn't that her correct name? A. No.

Q. Isn't that the correct name of the woman whom you now claim to be your wife? A. It is her maiden name.

MR. FUSARO: For the purposes of the record we are going to have some confusion unless we are able to distinguish who is who.

THE COURT: Well, if you ask him a question in such a way that he won't be mistaken as to the individual that you mean, I think it will be all right.

MR. FUSARO: For the purposes of the record may we refer to the wife resulting from this marriage of September 19, 1942, as Mrs. Coe #1 and the wife resulting from the marriage in May 1934 as Mrs. Coe #2?

THE COURT: I think so.

MR. MASON: That is satisfactory nomenclature.

Q. On November 1st, 1942, you came back to 6 Boynton Street with Mrs. Coe #2?

MR. PERMAN: Well, will you explain that? We have made the stipulation among ourselves, and I doubt whether it has been explained to the complete understanding of the witness; and I think it should be so done.

THE COURT: Well, I think that is so, simply that he should be asked to comprehend that.

Q. You understand that, don't you? A. Yes.

Q. Certainly. Well, answer the question, please.

A. I went to 6 Boynton Street.

Q. When you went back to 6 Boynton Street with Mrs. Coe #2, was all furnished? A. No.

Q. Wasn't it? A. No.

Q. Were there some furnishings there? A. Very little.

Q. But there were some? A. It was all piled up on the second floor.

Q. What was all piled up on the second floor? A. The furniture.

Q. And when you and Mrs. Coe #2 arrived back at 6 Boynton Street, what did you do with it? Set it up in place? A. It was used again.

Q. Yes. And from October 1st, 1942, you lived with Mrs. Coe #2 at 6 Boynton Street until you bought the Forest Street property? A. Yes.

Q. Now at any time after your return to 6 Boynton Street with Mrs. Coe #2, did you ever go back to Nevada? A. Yes.

Q. When? A. 1943.

Q. When in 1943? A. June.

Q. June 1943, is that right? A. That's right.

Q. Well, who did you back to Nevada with? A. With Mrs. Coe.

MR. PERMAN: That is #2.

WITNESS: #2.

Q. And you went back to Nevada when in June of 1943?

A. That's right.

Q. When? A. I'm not sure of the day.

Q. Well, what is your best judgment, Mr. Coe?

A. I think it was around the middle of June.

Q. And where did you stay? A. At Del Monte Ranch.

Q. By the way, you don't own that ranch?

A. Well, I would like to have it.

MR. FUSARO: I ask that answer be stricken.

Q. You don't own that ranch? A. No.

Q. And how long did you stay in June 1943?

A. Up to the middle of July.

Q. And you went there for the purpose of conferring with your counsel out there?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: That is one of the things.

Q. Yes. A proceeding had been started by that time, had it not?

MR. MASON: That is pretty indefinite.

MR. PERMAN: I object to that.

THE COURT: Well, "a proceeding" may be indefinite.

MR. FUSARO: All right, Your Honor.

Q. After you had been out there for that period of time you returned back to 6 Boynton Street?

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. That right? A. Yes.

Q. Now were there any other times that you were in Nevada outside of the occasions that you have already told us about? A. No.

Q. And I understand that the very day that the divorce decree was entered you married Mrs. Coe #2?

A. When the divorce was granted, yes.

Q. Yes, and your counsel was the best man and the Judge was the man that married you? A. Yes.

Q. And Mrs Coe #2 had gone to Nevada with you? A. No.

Q. What's that? A. No.

Q. Well, when you went to Nevada you were determined on getting a divorce in Nevada because you knew you couldn't get a divorce in Massachusetts?

MR. PERMAN: I object to that.

THE COURT: He may answer.

MR. MASON: There are two questions there, very definitely.

MR. FUSARO: May I suggest one of you object, rather than have the record confused. It seems to me, Your Honor, that with two men objecting, it is going to be hard.

THE COURT: Only one counsel may object to one question.

MR. MASON: May I be heard on the objection, Your Honor?

THE COURT: Yes, you may.

MR. MASON: The question very definitely includes two factors: One an assumption which may or may not be true; another, a direct question—"and when you went to Nevada for the purpose of obtaining a divorce."

MR. FUSARO: Well, he said that yesterday.

MR. MASON: Well, I don't know whether he would say that now. I don't know whether he heard you yesterday.

MR. FUSARO: What's that?

MR. MASON: This man has some difficulty with his hearing and we are never sure when he has heard the question. Therefore I think great care must be exercised and that the witness is given fair opportunity to understand fully each question; and if there is any possible confusion I think in this witness's case that we ought to be doubly careful.

MR. FUSARO: Well, I am very much surprised at the statement of counsel.

MR. MASON: Well, that doesn't interest me, whether counsel is surprised.

MR. FUSARO: It seems to me if you would like to change it, this is the time and place to state it.

MR. MASON: Well, I'm not changing it.

MR. FUSARO: Well—

THE COURT: Of course I am the one who is going to pass upon whether he had heard a question, that is, in the last analysis. Of course, if there was any doubt at the time the question was asked whether he heard it or not, under the circumstances and considering his impediment in hearing I would, of course, permit you to inquire whether or not he heard a certain question, and I would permit you to inquire whether or not he understood a question; as I have asked him at times. But in the last analysis I am the one who is going to pass upon whether or not he heard a question when it was answered, if it is an important question and if it remains in my mind.

MR. MASON: I simply appeal to Your Honor's discretion as to a question of this sort which could be confusing to this witness.

THE COURT: Oh, I think he is alert enough. He may be hard of hearing, but alertness refers to a person's mentality, and I think that the man is mentally alert. You don't contend that he isn't?

MR. MASON: No, we don't contend that he is defective in alertness; but his senses are not keen.

THE COURT: His sense of hearing may not be keen. I think perhaps his sense of sight may be very excellent. I have seen some indications of that. It may make up for his sense of hearing. But there is nothing to indicate that he is not alert, because alertness, as I take it, refers to a person's mentality.

MR. MASON: I'm not making an issue of that, but Your Honor has opportunity to observe the witness and his reactions, and your decisions control on that. But if this question were re-read at this state I think it might have some weight with Your Honor on the objection I make.

THE COURT: Well, of course that is a good suggestion in any event.

MR. MASON: After a long discussion. (Stenographer reads question aloud for witness)

THE COURT: He may answer that.

WITNESS: No.

Q. Didn't you make up your mind that you couldn't get a divorce in Massachusetts?

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor said you may answer.

THE COURT: You may answer. The question is: Didn't you make up your mind that you couldn't get a divorce in Massachusetts.

WITNESS: I wouldn't understand that.

Q. You don't understand that. Well, you became conscious after the Court—

THE COURT: I think perhaps you had better say "Did you reach the conclusion."

MR. FUSARO: Yes, thank you, Your Honor.

Q. Did you reach that conclusion after the court on March 25, 1942, dismissed your libel for divorce in this very court?

A. I prefer that up to the counsel.

Q. You mean you prefer to have your counsel answer that question?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He is just asking him if that is what he means by that answer.

Q. Is that so?

THE COURT: He can answer that yes or no whether that is what he meant by his answer.

WITNESS: No.

Q. That is not so? (Witness shakes head in negation)

Q. Well, didn't you make up your mind and come to the conclusion

you could not get the divorce in Massachusetts after the decision of the Judge here on your libel for divorce?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: No.

Q. You didn't make up your mind.

(RECESS. HEARING RESUMED)

Q. Now when you decided to go to Reno, what was the date of that?

A. What was that again, please?

Q. When did you decide to go to Nevada? A. That was in May.

Q. 1942? A. Yes.

Q. And at whose advice did you go to Nevada?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Well, Mr. Perman.

Q. It was Mr. Perman that advised you, that right?

MR. PERMAN: I object to that.

Q. Well, Mr. Perman is your lawyer—he is the man you refer to?

A. Yes.

Q. When you arrived in Nevada what lawyer did you see?

A. I went to the office of Senator Pat McCarron.

Q. Is he a lawyer? A. Yes, but I was referred to Alan Bible.

Q. By that particular man? A. Yes.

Q. And Alan Bible is a lawyer who take care of you in Nevada?

THE COURT: What is his first name?

MR. FUSARO: Alan.

Q. Is that right? A. Yes.

THE COURT: Bible?

WITNESS: Yes, like the bible.

Q. You saw Mr. Alan Bible within a day or two after your arrival in Nevada? A. The day after.

Q. That would be June 11, 1942? A. May be 11th or 12th.

Q. Well, June 11 or 12 of 1942, and you told your counsel that you wanted to get divorce.

MR. PERMAN: I object to that.

WITNESS: No.

Q. You did not want a divorce?

THE COURT: He might not have heard his counsel object. I think he may answer.

MR. PERMAN: Exception.

Q. What is your answer? A. No.

Q. That is, you did not tell him you wanted a divorce?

A. I talked with counsel in Nevada as to reference to that.

Q. To a divorce? A. Yes.

Q. And in accordance with the information that you gave to your counsel in Nevada, this divorce proceeding that was started in July of 1942 resulted? A. Yes.

Q. Now when was it that you had Mrs. Coe #2 come to Nevada?

A. She didn't come to Nevada.

Q. She was in Nevada the day you married her? A. Yes.

Q. How long prior to that day was it that Mrs. Coe #2 came?

THE COURT: If he knows. He might not.

MR. FUSARO: Yes.

THE COURT: He might not. It could be conceivable she might be there and he not know it.

MR. PERMAN: I don't think this whole thing is material. I don't quite see what issue the presence or absence of Mrs. Coe in Nevada would have on any of the issues now before the Court.

THE COURT: Well, I'm not anticipating his purpose, but it would seem to me that it might be material if he went to Nevada for the sole purpose of obtaining a divorce and if he went to Nevada to obtain a divorce for a cause which would not be a cause in Massachusetts. That might be a violation of Section 39 of Chapter 208.

MR. PERMAN: Your Honor is aware, I take it, from a reading of the record that Mr. Coe, the respondent in these proceedings, was not the person who obtained the divorce. It was Mrs. Coe, the petitioner.

THE COURT: Yes.

MR. PERMAN: Under those circumstances I cannot see, even though that may be the purpose, any relevancy in this line of examination.

THE COURT: That is very true, but this situation might arise, as I

see it—a situation might arise where one of the parties to the action had a bona fide residence in Nevada and the other party didn't, and relief might have been granted to the party who did not have bona fide residence in Nevada. But the validity of the relief granted might depend upon jurisdiction over the first moving party. Now that may or may not be so. But it could be so in some jurisdictions. For instance, a person might have a residence in a state whereby they could bring a libel for divorce and it might be lawful in that state for some one not a resident to come in and because the moving party had brought a divorce they might bring a cross libel, and that might give the Court jurisdiction over the second moving party because they had jurisdiction of the first. I don't know that that is so in Nevada because up to this time the law of Nevada has not been introduced. I assume that it will be later.

MR. FUSARO: Yes, Your Honor, we are prepared to cite the exact proposition that Your Honor has stated.

MR. PERMAN: My difficulty, may it please the Court, if I may state the position of the respondent, is that it is hard for me—and I'm not referring to this case in particular—it is hard for me to conceive of any situation where the latter part of the provisions of Chapter 208, Section 39, could be held to apply to a situation where the relief granted was granted against the person who it was alleged violated the statute of Massachusetts, and whereas here the respondent who it is claimed allegedly violated the provisions of that statute was not the one who did in fact obtain the divorce.

MR. McKEON: We will agree that counsel for the respondent has difficulty in comprehending that.

MR. MASON: Is that for the record? That is quite a concession.

THE COURT: Well, I will rule that the question is one which might have a hearing upon the jurisdiction of the Nevada Court.

MR. PERMAN: Exception.

Q. What is your answer, sir? A. Will you repeat the question?

Q. Yes sir. How long before the day you married Mrs. Coe #2 was she in the state of Nevada?

THE COURT: To his knowledge.

Q. Yes, to your knowledge. A. No.

THE COURT: No. To your knowledge how long?

WITNESS: No, no.

THE COURT: You don't understand.

WITNESS: She wasn't in Nevada.

THE COURT: Prior to the day of divorce?

WITNESS: No.

Q. Where was she? A. In California.

Q. Where in California? A. Lake Tahoe.

Q. Spell it, please. A. T-a-h-o-e.

Q. And she had been at Lake Tahoe, California, how long?

A. I should say about the latter part of July.

Q. July 1942, that right? A. Yes.

Q. You had arranged for Mrs. Coe #2 to go to Lake Tahoe, California?

A. No.

Q. Did she go there at your request. A. She went on her own accord.

Q. You knew about it? A. Yes.

Q. You paid the expenses? You are smiling. A. Yes.

Q. And you planned for her to be down there, nearby where you were to obtain your divorce? A. No.

Q. You arranged for it? A. No.

Q. But anyway, you say you knew about it? A. Yes.

Q. Well, what day in July 1942 was it that she went to Lake Tahoe?

A. I think about the 18th.

Q. Of July? A. Yes.

Q. You saw her, did you? A. Yes.

Q. I see. And you saw her on July 18, 1942? A. Yes.

Q. In California? A. Yes.

Q. And you were with Mrs. Coe #2 how long on that occasion, in California? A. I was outside of Nevada during my residence.

MR. FUSARO: I ask that be stricken out, Your Honor.

THE COURT: Yes, it may be. He may answer it directly.

WITNESS: No.

Q. How long?

THE COURT: Did you look to the rear of the room to get a signal?

WITNESS: No.

MRS. COE #2: I did not signal.

THE COURT: Well, you have signalled him yes and no.

MRS. COE #2: Judge Stapleton, I swear that is not true.

THE COURT: Do you read the sign language with the fingers?

MRS. COE #2: No, I don't know the sign language. I wasn't even looking.

MR. FUSARO: Your Honor, this witness has been turning again and again to Mrs. Coe, and that's the reason I moved over here.

THE COURT: I thought so, and that is why I permitted you to be there, because I have seen her when I thought she was signalling yes and no. Do you know the sign language.

MRS. COE #2: I don't.

THE COURT: You mean you have not signalled "No" on your gloves yesterday?

MRS. COE #2: I wouldn't know how.

THE COURT: And you have not signalled "Yes" in the sign language?

MRS. COE #2: No, definitely not.

THE COURT: Then it is a strange coincidence that you made the signs.

(Mrs. Coe #2 starts to cry) (Mrs. Coe #2 leave room)

THE COURT: Well, that will do.

Q. Mr. Coe, how long were you in California on that occasion at Lake Tahoe? A. I wasn't in California.

Q. Well, didn't you say that on July 18, 1942, you visited Mrs. Coe #2 at Lake Tahoe, California? A. No.

Q. You didn't say that. What did you say only a moment ago about seeing Mrs. Coe #2 on July 18, 1942? A. Well that was with Alan Bible.

Q. Where did you go with Alan Bible? A. What?

Q. Where did you go in California with Alan Bible?

A. Over to Lake Tahoe.

Q. And you saw Mrs. Coe #2? A. Yes.

Q. How long were you with Mrs. Coe #2 on that occasion?

A. Just for the afternoon.

Q. And had you been seeing her from that time up to September 19, 1942, quite regularly?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: May I have that question, please? (Stenographer reads aloud question)

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: No.

Q. Had you seen her again after July 18, 1942 and prior to September 19, 1942?

MR. PERMAN: Objection.

WITNESS: No.

THE COURT: Well, there are two questions there.

MR. FUBARO: I'm sorry; I will withdraw it.

Q. From July 18, 1942, when you saw Mrs. Coe #2 at Lake Tahoe, California, up to September 19, 1942, did you see Mrs. Coe #2 again.

A. No.

Q. And was it on July 18, 1942, that you arranged for Mrs. Coe #2 to be in Nevada so that you could marry her? **A.** No.

Q. You say that is not so? **A.** Yes.

Q. When did you arrange for Mrs. Coe #2 to be in Nevada so that you could marry her? **A.** I didn't arrange it.

Q. You didn't arrange it? **A.** No.

Q. It was just a coincidence that Mrs. Coe #2 was in Nevada September 19th when you married her, that right? **A.** No.

Q. She came to Nevada at your request, didn't she? **A.** No.

Q. Did you have somebody send for Mrs. Coe #2? **A.** Alan Bible.

Q. Oh, you had your lawyer do that, that right? **A.** Yes.

Q. When was it you instructed your lawyer, Mr. Bible, to have Mrs. Coe #2 come to Nevada so you could marry her on September 19, 1942?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I did not instruct him.

Q. You did not instruct him at all? **A.** No.

Q. So that you really don't know how it came about that Mr. Bible had arranged with Mrs. Coe #2 to be in Nevada on September 19?

A. That was up to Mr. Bible.

Q. Do you really mean that, Mr. Coe?

A. Well, it was under his counsel.

Q. It was under is counsel that you got married? **A.** No.

Q. You arranged for that, didn't you? **A.** No.

Q. You didn't? A. No.

Q. Didn't you arrange for your own marriage? A. No.

Q. Do I understand you correctly, sir, that you did not arrange for your own marriage to Mrs. Coe #2 on September 19, 1942?

A. That was with the help of Alan Bible.

Q. Well, it was through him that this marriage took place on September 19, 1942? A. Yes.

Q. Now do you understand what I am asking you? A. Yes.

Q. What arrangements did you have with Mr. Bible about Mrs. Coe #2 coming from California to Nevada.

A. Well, he said it would be all right.

Q. Well, I am asking you what arrangements you had?

A. He advised me it would be all right.

Q. Well, did you tell Mr. Alan Bible to send for Mrs. Coe #2 so you could get married? A. No.

Q. I see. When you went to Nevada did you inform Mrs. Coe #2 that you would institute divorce proceedings in Nevada? A. No.

Q. Did you ever give Mrs. Coe #2 information that you had instituted divorce proceedings in Nevada? A. No.

Q. When you saw Mrs. Coe #2 July 18, 1942, did you inform her you had instituted divorce proceedings in Nevada? A. Yes.

Q. You did? A. Yes.

Q. And did you also know the day when that case would be heard?

A. Yes.

Q. And in pursuance of that it was arranged for Mrs. Coe #2 to be in Nevada on the 19th of September so that you could get married, that's true, isn't it? A. No.

Q. That isn't so. Well, where was Mrs. Coe #2 from the time that you entered Nevada up to July 18, 1942? A. Up to July 18?

Q. Yes. A. She was here.

Q. In Worcester? A. In Worcester.

Q. You kept her informed of your whereabouts, did you? A. No.

Q. You didn't. Well, didn't you correspond while you were down in Nevada.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer it.

MR. PERMAN: Exception.

Q. Didn't you? A. Yes.

Q. Yes. Well where was Mrs. Coe #2 staying in Worcester when you left for Nevada?

MR. PERMAN: I object to that.

THE COURT: If he knows.

Q. Yes. Do you know. A. At her home. Where?

MR. PERMAN: Exception.

WITNESS: Jacques Avenue,

Q. 8 Jacques Avenue, that's right isn't it? A. Yes.

Q. And it is true, is it not Mr. Coe, that you were determined to get a divorce from Mrs. Coe #1 so you could marry Mrs. Coe #2?

MR. PERMAN: Objection.

WITNESS: No.

THE COURT: He may answer.

Q. And you stated to people, different people, that you would get rid of Mrs. Coe #1 and marry Mrs. Coe #2?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. That's right, isn't it? A. I don't know.

Q. And it is a fact, is it not, that you testified in the separate support proceedings and in your own divorce libel that up to March 19, 1942, your relations with Mrs. Coe #2 were purely of a business nature?

MR. PERMAN: Objection.

WITNESS: I don't understand.

MR. PERMAN: Wait a minute; wait a minute.

THE COURT: I suppose the important thing in testimony at a previous hearing is as to whether or not it would contradict anything he said here. Do you think that contradicts it?

MR. FUSARO: Not only that it contradicts him but that it is some evidence, if Your Honor please, of an intention to get a divorce outside the confines of Massachusetts and marry this girl, which he eventually did. It is all a part of a concerted action.

THE COURT: Yes, I permitted that. But this question wouldn't tend to show that.

MR. FUSARO: Very well, Your Honor.

THE COURT: Nor would it tend to contradict because it was up to a previous date. It might be conceivable that he formed that idea subsequent to that date. Therefore it wouldn't contradict. It wouldn't contradict. It wouldn't contradict his testimony here nor would it tend to show that purpose.

MR. FUSARO: Very well, Your Honor.

Q. Mr. Coe, when you left 6 Boynton Street and decided to go to Nevada, you left your automobile garaged here in Worcester?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: No.

Q. Didn't you have cars registered in Massachusetts? A. Yes.

Q. Didn't you leave them in Massachusetts? A. No.

Q. Where did you leave them? A. I left one in New York.

Q. Where did you leave the other one? 6 Boynton Street, wasn't it?

A. At the garage.

Q. Yes, 6 Boynton Street, at the garage. You have got a garage there?

A. Yes.

Q. Well, why do you say no and then later on change your answer?

MR. PERMAN: I object to that.

THE COURT: He may have it, with reference to that particular question.

MR. FUSARO: Yes, that is what I am referring to.

Q. What is your answer? A. What was the question?

Q. Why did you say no when I first asked you as to whether or not your cars were left here at 6 Boynton Street and then later on you said differently? A. Well, I had four cars.

Q. I see. But yesterday you only remembered two?

A. That's right.

Q. But now you remember you had four cars? A. I had two here.

Q. You have four cars now? A. I had two in New York.

Q. You have two in New York and two here, that right? A. Yes.

Q. And you had one car garaged at 6 Boynton Street?

A. At the Boynton Street garage.

Q. And you had another car garaged with Mrs. Coe #2? A. No.

Q. What? Where was that car?

A. It was at the corner house, #2 Boynton.

Q. So you had two cars on Boynton Street, one at #2 and the other at #6? A. Yes.

Q. I see. Well, Mr. Coe, I want to ask you this question, and I want to make sure you understand it. Do you recall March 16, 1942?

A. March what?

Q. 16th, 1942, during the hearings in this previous case I asked you this question: "Now how many homes do you maintain?" And your answer: "I maintain one." Do you remember that question and answer?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I can't remember.

Q. Then I went on to ask you, sir, this question: "Where is that?" Answer: 6 Boynton Street and an apartment in New York City." That is your answer, is it not? A. Yes.

Q. So that it is a fact, is it not, that up to March of 1942 you maintained your home, the only home you had, at 6 Boynton Street and an apartment in New York City? A. No.

MR. PERMAN: I object to that.

MR. MASON: Just a moment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. Read it to yourself.

A. "How many homes do you maintain? I maintain one."

THE COURT: The last question you excepted to was, "Is it a fact." Not whether or not he testified to that, but is it now a fact.

MR. PERMAN: I think he has answered that, Your Honor.

Q. And the question: "Where is that?" And your answer: "6 Boynton Street and an apartment in New York City." Read it.

MR. PERMAN: Wait a moment.

WITNESS: Apartment in New York City.

Q. And 6 Boynton Street too? A. Yes.

THE COURT: It isn't important whether it is there or not, but whether he said it.

WITNESS: According to that paper it would be different.

THE COURT: Well, the important thing is whether you said it or not, not whether it is there or not.

WITNESS: I might have said it then.

THE COURT: You might have said it?

WITNESS: I might have said it then.

THE COURT: I want you to understand he is showing it to you for the sole purpose of making sure you understand.

WITNESS: Yes, Your Honor.

THE COURT: But he is asking you whether or not you said it, not whether or not it is on the page. You see? He is showing you the page for the sole purpose of making sure that you understand.

WITNESS: Yes.

THE COURT: But when he asks the question he is asking you whether or not you said it; not whether it is there.

WITNESS: Then I wouldn't know.

Q. Oh, you wouldn't know? A. No.

THE COURT: If you wish you may say that you did not say it, if that is a fact.

WITNESS: I would say it is a fact that I don't know, and yet I may have said it at that time.

THE COURT: In other words, if you didn't say it, you may contradict the stenographic record.

WITNESS: I wouldn't contradict that.

THE COURT: You wouldn't?

WITNESS: No.

THE COURT: All right.

Q. And do you recall that I asked you what the apartment in New York consisted of, and you said three rooms—is that right? A. Yes.

Q. That you had a lease for one year, is that right? A. No.

Q. You say you did not have a lease for one year? A. I renewed it.

Q. Well, you had it for one year at that time? A. Yes.

Q. And it was a furnished apartment? A. I furnished it.

Q. Yes, you furnished it with merchandise you bought in New York?

A. Yes.

Q. Yes. Then I asked you this question: "You have had that apart-

ment in New York how long?" And your answer was, "October 19, 1940," is that true? A. Yes.

Q. All right. Then do you remember my asking you this question: "Were you maintaining an apartment in New York since October 1940 because of your hearing?" That's right, isn't it? A. No.

Q. You say that's not true? A. Unless you refer to my treatments.

Q. Well, treatments for your hearing.

THE COURT: No, he isn't referring to that. He is referring to what you said, what you said at the previous trial; that's what he is referring to.

WITNESS: Yes, Your Honor.

Q. What is your answer? A. Yes.

Q. Did you say that or not? A. Yes.

Q. All right. And this question: "Was it necessary for you to stay down in New York four or five days each week," and your answer was, "What's that again?" And I said, "Was it necessary to stay in New York four or five days every week?" Answer: "I stayed there, yes." And you stayed there in New York, you testified, for the purpose of getting treatments only? A. No.

MR. PERMAN: I pray Your Honor's judgment.

Q. You say that is not true? A. No.

THE COURT: Are you quoting that exactly as it is there?

MR. FUSARO: Not that last one, no.

THE COURT: Then you may confuse him as to whether or not you are quoting or whether or not you are now asking him if it is a fact.

MR. FUSARO: Well, I will come to that.

THE COURT: It is sometimes difficult for a lay person to get that distinction.

Q. Listen to this question.

MR. FUSARO: Of course I know Your Honor has to get a train.

THE COURT: No, I'm not going to get a train.

MR. FUSARO: If I may have just a minute or two?

THE COURT: Yes, I would just as soon go on until quarter after. Do you want to go that long?

MR. PERMAN: Well, I don't know how the witness would feel.

THE COURT: Are you tired?

WITNESS: Well, I prefer to stand up.

SHERIFF: I would like to say the Justice upstairs is waiting for Mr. McKeon.

Q. You remember this question that you maintained an apartment in New York since October 1940 because of your hearing? And your answer was "Yes," is that right? A. Yes.

Q. I see.

THE COURT: Well, let's stop now.

(Hearing suspended until 10 A.M. Feb. 7, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FEBRUARY 15, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforesaid matter.

LAURA G. QUINN,
Commissioned Stenographer

FEBRUARY 7, 1945 HEARING

MR. MASON: If Your Honor please, I would like to take up one matter before we proceed further with the evidence. An incident occurred yesterday in the course of the trial of this case which we submit has serious implications, and I think it is the duty of counsel for the respondent to call the matter to the attention of the Court at this time—and I refer specifically to the colloquy that occurred yesterday with reference to the matter of signalling. That, of course, was a severe charge to make with reference to the witness on the stand and to a person not a party in these proceedings, and I wish to address my remarks to the Court in this respect without intending in any way to cast any reflection upon the Court, but simply because I think it is our duty in the interests of our client to protect his interests in a fair trial. It is a matter of record now in this case that the examination of Mr. Coe was interrupted by the Court and the question asked of the witness whether he was being signalled to by Mrs. Coe #2, so-called. Now I should like to start with the comment made by counsel for the petitioner early in the examination of Mr. Coe

that it was obvious that Mr. Coe was turning repeatedly towards his counsel during the course of his examination and during the course of that examination repeated objections were being made by his counsel. It is a matter, if not of record, obvious to the Court that the respondent has a serious impediment in his hearing and depends to some extent on lip reading; and it also must have been obvious that for the purpose of ascertaining whether his counsel were making objections and not being sure whether he was hearing them that he turned repeatedly towards counsel, turned his eyes towards counsel as he was being examined; and during the course of that examination counsel for the petitioner made the remark that he knew what was going on and tried to call Your Honor's attention to that fact. Later on, when counsel for the petitioner changed his position in connection with the examination of the witness, Mr. Coe—

THE COURT: Well, let me interrupt you at this time. There was no thought in my mind then or now that either counsel for the respondent made any signals. I observed none, I observed nothing.

MR. MASON: Thank you, Your Honor.

THE COURT: Perhaps if I could go on and tell you what I did observe and what I thought from it, it might help you some. I observed Mrs. Coe #2 throughout the first day having her hands up in this manner (indicating), and I noticed that sign (demonstrating) at least twenty-five times, at least that number during the two days. That would indicate to anyone who knew the mute language it is the signal "N," and it is also the negative. She made a sign which is a "Y." Whether she did so consciously or unconsciously, she did it many times. I did not observe an "E," but I did observe an "S." Now whether she did that consciously or unconsciously, I don't know. That is, I won't say I don't know; I will qualify that. It could be mere coincidence. I have my own opinion about it.

MR. MASON: might suggest at this—

THE COURT: Now of course if she did it purposely, it is obstructing justice and it is contempt of Court.

MR. MASON: No question about that.

THE COURT: And could be punished severely. I am going to give her the benefit of the doubt. Now I did not suspect counsel at all. I noticed nothing that counsel did, and I did not have any opinion or idea that counsel signalled the witness in any way.

MR. MASON: I didn't think Your Honor had, and I just refer to that incident as a background to what I intended to say with reference to the matter of alleged signalling by Mrs. Coe. And I do want to comment that I am not familiar with the sign language, but the gestures Your Honor has indicated might well be the the normal positions of the hands of a person who was nervous and fidgety, with no purposeful using of any sign language. However, I think the matter does involve a question as to the possible pre-judgment of the credibility of a witness, which might well effect, and well may effect Your Honor's ultimate judgement in this case, and insofar as there was any personal observation by Your Honor as to certain things that happened within the Court Room, of course that is within your entire province and control.

THE COURT: That is as much evidence as the spoken word.

MR. MASON: Correct; as far as the witness on the stand is concerned. It has come to our attention that there was a conference between Your Honor and counsel for the petitioner at which conference counsel for the respondent were not present, involving the matter of this signalling.

THE COURT: That is true.

MR. MASON: And that, if Your Honor please, I regard as improper conduct on the part of counsel for the petitioner because the matter in effect went to the merits of this controversy, of this case.

THE COURT: Perhaps if I told you what took place. I went to counsel, I happened to see counsel as I went out and I said, "I don't want to accuse that woman falsely. If the first Mrs. Coe knows whether or not Mr. Coe understands the mute language I would like to know it and have it in evidence, if she does know."

MR. MASON: The first Mrs. Coe, did Your Honor say?

THE COURT: Yes. Now there was no comment on the part of counsel other than this: "Well, I don't know anything about it, but I will ask her." Now that is what took place. Now of course a Judge has a right to put a witness on the stand and ask the witness questions, and he also has a right to make inquiries from persons whether they have certain knowledge that might affect the conduct of a trial or the conduct of a person in the court room, if he sees fit. Now that is what took place, as nearly as I can relate it.

MR. MASON: I can say with due deference to Your Honor and without

intending to cast any reflection whatsoever upon Your Honor's judicial attitude in this case, it does seem to me that that situation would be of such serious import and if the slightest doubt arose in the Court's mind as to the possibility of the incidence, it would be very difficult for any individual in the position of the Court disabusing his mind of that possibility or probability. I think counsel for the respondent were entitled to be consulted at the same time that counsel for the petitioner were consulted with reference to that matter, and I think further that I should like to call the Court's attention to a statement made by Mr. Fusaro at that time where he called the Court's attention to the fact that the witness had turned again and again to Mrs. Coe, stating that that was the reason he had moved over, and the Court said you thought so. I think it is my duty to press at this time and to move for a mistrial in this case. I think it is a duty that we owe to our client in this case, because of the possible prejudice that may be involved in the ultimate decision of this cause. And I think—I made that motion because it bears on the probabilities of the respondent obtaining a fair trial in this case in view of what transpired. And I so move, Your Honor.

THE COURT: Well, I am going to deny your motion for this reason. I observed he very things that Mr. Fusaro commented on. I observed the witness turn towards Mrs. Coe #2 not once but many, many times before making his answer, and I observed what I thought to be, and what I still think to have been signals from her. Now I said that so far as she is concerned on the matter of whether she is in contempt, I will give her the benefit of the doubt; but not so far as this trial is concerned, so far as the conduct of the witness pertains to this trial, because as I stated previously the conduct of a witness is as much evidence as the spoken word.

MR. MASON: Well, in view of Your Honor's position—

THE COURT: Now as far as my speaking to Mr. McKeon after the hearing is concerned, I see nothing improper in that because I was inquiring from him, or I was rather not inquiring from him but directing him to inquire of another person whether or not she had certain knowledge, and telling him that I would like to hear from that witness on the witness stand. Now he made no comment to me other than to say that he would inquire. Now that certainly is a Judge's right; and my only concern in directing him to make that inquiry was whether or not I had accused Mrs. Coe #2 falsely.

MR. MASON: I understand Your Honor has denied my motion for mistrial?

THE COURT: Yes.

MR. MASON: Please note our exception.

THE COURT: Yes.

MR. MASON: And also, in view of Your Honor's remarks, may I now move Your Honor disqualify yourself from hearing in this case, and I make that motion respectfully, because of a pre-judgment on what would appear to be insufficient evidence of any such signal, signalling, alleged signalling. I so move, Your Honor.

THE COURT: That motion is denied. There was no pre-judgment. I merely reach conclusions from my own observations on what took place in the Court Room.

MR. MASON: My exception to that, Your Honor.

THE COURT: Yes.

MR. FUSARO: May I proceed?

THE COURT: Yes.

MARTIN V. B. COE, resuming stand, continued to testify as follows:

Q. BY MR. FUSARO:

THE COURT: Now Mrs. Coe, I am going to direct you, if you wish to stay in the Court Room, to keep your hands down.

Q. At adjournment yesterday I was asking you about your New York apartment, do you recall? A. Yes.

Q. And I asked you at the previous hearing in this case on March 16, 1942, if you were not asked this question: "And you have had that apartment in New York how long?" And your answer: "Had it since October 1940." You said that, didn't you? A. Yes.

Q. Now I asked you this question: "Did you maintain an apartment in New York since October 1940 because of your hearing?" And your answer is "Yes." You said that? A. Yes.

Q. "Question: I see. And not because of anything else?" And your answer, "No. I wanted to get back my hearing." You said that? A. Yes.

Q. "Question: Well you know when you started to see Dr. Josephson, don't you? Answer: Yes." You said that? A. Yes.

Q. "Question: When? Answer: That was the latter part of 1940." You said that? A. Might be.

Q. No. Did you say what I just read? A. I don't remember.

Q. "Question: That's the time you got the apartment in New York, wasn't it? Answer: About that time or before." You said that, didn't you? A. What do you mean about that time or before?

Q. Well, it refers back to the other question. Did you say it or not?

THE COURT: I'm sorry, I don't understand it; perhaps the witness doesn't.

Q. Do you recall this question being asked you at the previous trial, and your answer: "Well, you know when you started to see Dr. Josephson don't you?" And your answer was, "Yes, that's right." A. Yes.

Q. "Question: When? Answer: That was the latter part of 1940," you remember that question and answer? A. Yes.

Q. And you remember this question and answer at the previous trial: "That's the time you got the treatment in New York, wasn't it? Answer: About that time or before." You remember that question and answer,

A. That's the time I was seeing the Doctor.

Q. Yes. "Question: Yes, that's about the time Dawn Allen starts to come to New York?" And your answer, "About that time or after."

MR. PERMAN: I pray your Honor's judgment. Wait a minute. I object to that.

THE COURT: What is your objection?

MR. PERMAN: We are getting pretty far afield, if Your Honor please, on any of the issues that are involved here. Miss Allen is not a party to these proceedings. I cannot see any relevancy as to anything that happened in 1940 which in any way affects any matter of contempt or modification of a decree that was made on March 25, 1942. I submit that that line of interrogation is wholly out of order.

THE COURT: That would be very true. Mr. Perman, if that is all there was in this case. But we are also trying out the issue here of the domicile of a witness, and since domicile is in many respects a question of the intent of a person any factor, or any fact, rather, which would shed light on the intent of the person whose domicile was in question is relevant.

MR. PERMAN: Do I understand now that that issue of domicile is involved in the respondent's plea in bar—there have been so many positions taken with reference to what was in issue, and Your Honor will

recall that I have insisted right along that there was before Your Honor the entire Nevada proceedings. Your Honor will now recall the ruling that was made with reference to that, subject to my exception and objection—

THE COURT: Let me interrupt you. Do you also recall that there was discussion for very nearly two hours yesterday and that I offered you an opportunity to introduce any exhibits that you wished? It went on and on and on, and finally I said, "I don't intend that we should reach an impasse here where we cannot proceed at all." Then I told Mr. Fusaro to proceed.

MR. PERMAN: Yes, I recall that very well.

THE COURT: Now of course you have raised the issue by your pleadings.

MR. PERMAN: And that is my inquiry now. My position right along is that that issue has been raised, that those Nevada proceedings are raised not only by the pleadings themselves—

THE COURT: Oh there isn't any question about that.

MR. PERMAN: In view of the fact that these Nevada proceedings were not only offered in evidence but they are also raised in the plea in bar; there has been considerable confusion which—

THE COURT: Well, I wanted you to introduce the documentary evidence of it yesterday and gave you opportunity to do so, and I will later in the trial.

MR. MASON: It is in evidence now.

MR. PERMAN: Well, so far as introducing it is concerned, Your Honor is aware—

THE COURT: I don't intend to keep that out; not at all. You have raised that by the pleadings and I intend until the case closes to give you an opportunity to introduce it.

MR. PERMAN: This line of inquiry, I'm not at all sure as to what ground it is being directed to; and if it isn't before the Court as Your Honor has suggested even the question of domicile is not open. As I had supposed, the petitioner is proceeding on what was termed evidence to make it a prima facie case. I'm not sure that I understand that even now; but at any rate that was what the petitioner had maintained was the object and purpose of all this testimony.

THE COURT: There was talk of that. Before I suspended I said to you, you may introduce all documentary evidence by way of exhibits or whatever they are, whatever it may be, to present the issue of the Nevada divorce. Now I still intend to give you that opportunity; I intended to yesterday, and you will have an opportunity to do it later.

MR. PERMAN: We cannot very well proceed—that is, as it stands now, we are not the initiating party; we can only be the initiating party under the plea in bar; and if Your Honor will recall, we had asserted our readiness and willingness to proceed in accordance with the hearing before Judge Wahlstrom.

MR. FUSARO: May I interrupt to say that has already been gone over and Your Honor has ruled on it, and we spent a great deal of time—and may I now proceed with my question?

MR. PERMAN: We have the question of the relevancy of the question here.

THE COURT: You may have the question.

MR. PERMAN: Exception.

Q. Did you— **A.** No.

Q. So that you may understand that question and answer, in view of the interruption, it is true, is it not, that at the previous hearing in March, March 17, 1942, this question was asked, "Yes, that's about the time Dawn Allen starts to come to New York?" And the answer: "About that time or after,"—you said that, didn't you?

MR. PERMAN: I object. Wait a minute. I think counsel—

MR. FUSARO: I object. You wait I submit to Your Honor's judgment now.

MR. PERMAN: I think there is something else involved here too.

MR. FUSARO: I object to Mr. Perman's saying anything further after the question has been allowed.

MR. PERMAN: Now Your Honor has done some directing here with reference to the witness and in view of—

MR. FUSARO: That has got nothing to do with this question, Your Honor.

MR. PERMAN: I request the right to be heard.

THE COURT: I will hear you.

MR. PERMAN: I think in view of all that has gone on in spite of

whatever heat or agitation the petitioner's counsel may find themselves in—

MR. FUSARO: I object to that.

MR. PERMAN: I don't think the questions ought to be phrased by counsel for the petitioner so there is little if any lip movement, in order to take advantage of this witness's impediment.

MR. FUSARO: Your Honor, that is very unfair.

MR. MCKEON: Let him go ahead.

MR. FUSARO: Very well.

THE COURT: Now Mr. Perman, as I remember it Mr. Fusaro repeated the question and the witness answered "No." In other words "No" implied that he did not make such a statement. Then Mr. Fusaro repeated the question, saying "In order that you may understand."

MR. PERMAN: But it was repeated in such a way that there was no lip movement, or very little lip movement.

MR. MCKEON: Are you making objection?

MR. MASON: That's right.

THE COURT: The defendant said that he depended on hearing.

MR. PERMAN: And lip reading.

MR. FUSARO: He denied that.

THE COURT: He said he depended on hearing. And that particular question was asked in a louder tone of voice than his previous question. Sometimes Mr. Fusaro does drop his voice, but he didn't then.

MR. PERMAN: I was not referring to the volume of voice, if Your Honor please.

MR. FUSARO: Do you really think I did what you claim I did?

MR. PERMAN: I haven't any doubt about it.

MR. MCKEON: May I request if Mr. Perman is going to make an objection that he state it specifically and not just wander off in glittering generalities in which we are not concerned? And may I first suggest that having once or twice or twelve times raised the same objection it is about time that there were no more arguments by him in favor of the same identical issue. We already know what—

THE COURT: Now Mr. McKeon, I don't mean to restrict counsel too much as to objections they may make. I suppose it is the right of counsel to make objections.

MR. MCKEON: I agree to that, fully of course.

THE COURT: I don't think I will restrict him on objections. I will pass upon each one as it comes up. I hope counsel won't make unnecessary objections and prolong this hearing unnecessarily.

Q. Did you understand that I stated to you before your counsel objected? A. I have forgotten.

Q. You have forgotten. Now I would like to make sure that you understand the question before you answer it: It is true, is it not, that at the previous hearing of this case on March 17, 1942, you were asked this question: "Yes, that's about the time Dawn Allen starts to come to Worcester?" And your answer, "About that time or after"?

MR. PERMAN: Objection.

Q. You may answer, sir.

MR. PERMAN: Wait a minute.

THE COURT: He may answer.

WITNESS: I don't remember.

Q. Well, you previously said "No" you didn't so say?

MR. FUSARO: Excuse me, my attention has been called here—may I have my question read? I think I made an error in the question.

(Stenographer reads question)

MR. FUSARO: I withdraw that.

Q. It is true, is it not, that the previous hearing in this case on March 17, 1942, you were asked this question: "Yes, that's about the time Dawn Allen starts to come to New York," and your answer, "About that time or after"?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. That was your answer, wasn't it? A. I don't remember.

Q. Well, you said a moment ago "No." What did you mean when you said "No" to that very same question? A. That was an error.

Q. It was an error. And now you say you don't remember? A. Yes.

Q. Well, it is true, is it not, that Dawn Allen did come to New York and you maintained your apartment there in New York not as your legal residence but to carry out your associations with Dawn Allen?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: No.

Q. But Dawn Allen did come to New York and you so testified at the previous hearing?

MR. PERMAN: Objection. Wait a minute.

THE COURT: I think you must call his attention to the particular question, unless you leave out the previous hearing.

MR. FUSARO: Yes, Your Honor.

THE COURT: "and you so testified," unless you leave that part out. As long as you have the record here, ask him the particular question.

Q. Did you see Dawn Allen in New York in 1940?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: At the Doctor's, yes.

Q. What Doctor? A. Dr. Josephson's offices.

Q. Any other place in New York? A. No.

Q. Just at Dr. Josephson's? A. Yes.

MR. FUSARO: May I have a moment, Your Honor, to get some papers in this case?

THE COURT: Yes. Any time you wish to sit down, you may.

WITNESS: I can stand, thank you.

Q. Do you remember, Mr. Coe, that you were asked certain questions with respect to the petition of Mrs. Coe #1 concerning your residences?

A. What do you mean?

Q. Do you remember this question ever being asked you: "If you have or had an apartment or tenement or place of residence in any state other than Massachusetts, do you still maintain it? Is it temporary or permanent? Do you intend to give up your domicile in this state?" Do you remember that? And your answer—

MR. MASON: Wasn't that a question?

THE COURT: Pardon me, Mr. Fusaro. Are these questions and answers to interrogatories?

MR. FUSARO: Yes, Your Honor.

THE COURT: Then I think the witness is entitled to be so informed.

MR. FUSARO: Yes, Your Honor.

Q. I direct your attention to this document. That is your signature, is it not? A. Yes.

Q. And you acknowledged that before your counsel, Mr. Perman?

A. Yes.

Q. And filed in this Court on May 3, 1941? A. Yes.

MR. FUSARO: Your Honor, I offer Interrogatory #5 and the answer.

MR. PERMAN: May we have a moment, Your Honor?

THE COURT: Yes.

MR. MASON: Do I understand these are interrogatories which are being offered as interrogatories in this case?

MR. FUSARO: My question, I think, is pretty clear.

MR. MASON: Your answer is very unclear to my question.

THE COURT: I think if there is any doubt you should answer.

MR. FUSARO: Yes, Your Honor. I am offering, if Your Honor please, the question numbered 5 and the answer thereto made previously.

THE COURT: In another hearing?

MR. FUSARO: Yes; well, made at a time as stated.

THE COURT (To Sheriff): Mr. Deery, will you get me Vol. 8, Chapter 232 in the General Laws, please?

MR. FUSARO: Do you object?

MR. MASON: Yes.

MR. FUSARO: In view of the objection if Your Honor please, may I ask another question? I will withdraw the other.

THE COURT: If you wish to withdraw it.

MR. FUSARO: Yes, I withdraw it.

Q. Mr. Coe, having called this matter to your attention, your signature to answers to interrogatories, you do recall that this question was asked you: "If you have or had an apartment or tenement or place of residence in any state other than Massachusetts, do you still maintain it? Is it temporary or permanent? Do you intend to give up your domicile in this state?" And your answer: "(A) Yes. (B) Temporary. (C) At this time I am unable to state my intention as to domicile"?

MR. MASON: Objection. I don't think the question was completed, but go ahead.

MR. FUSARO: Thank you. (Stenographer reads question)

MR. MASON: I object.

THE COURT: For what reason?

MR. MASON: The question imports a reference to so-called interrogatories which I think should be at least clarified as to whether they are interrogatories which are filed in this case as interrogatories, or as to whether he is trying to contradict the witness as to interrogatories applying in some other case. I object to any reference to interrogatories without any attempt to describe what the interrogatories relate to. If they are interrogatories in this case, they have a certain standing; if they are interrogatories in another case, they have another standing.

THE COURT: Well, will you wait just a minute. (Looks at General Laws). What I was looking up was the use of depositions in another action.

MR. FUSARO: That's right; I am entitled to it under law, Your Honor.

THE COURT: Well, there are certain limitations upon it, and that is what I was looking for. I don't think you can introduce them as interrogatories in this case because there was no discontinuation of the previous action. But you may use it in this manner: You may use it to contradict the witness by asking him if he was asked this question and if he made this answer.

MR. FUSARO: That is right.

THE COURT: Whether he made it verbally or in writing. But I will restrict it to a contradiction of the witness, rather than evidence of the fact itself; and all such questions so asked are so restricted.

MR. FUSARO: Very well, Your Honor.

Q. I don't suppose you recall that question. I will ask you another one so as to make sure.

THE COURT: Just a minute. And previous questions to which you made objection are so restricted, likewise.

MR. PERMAN: Do I understand that by that Your Honor means all reference, that that includes a reference to all questions that were asked of this witness concerning his testimony at the hearing on the separate support case?

THE COURT: Oh certainly. It is not evidence of the fact itself, but it is introduced merely for the purpose of contradicting him.

MR. PERMAN: Then so it may be clarified further, not without any

direct bearing on the issue of domicile as such except insofar as it may be contradictory of testimony that was given because—

THE COURT: Well, if it affects the credibility of a previous statement made by him, then of course it affects his previous statement made here on oath with reference to his domicile and goes to the credibility of that statement.

MR. PERMAN: I think I understand Your Honor's position.

MR. MASON: We still maintain our objection, notwithstanding the limitation, to the whole line of questioning.

THE COURT: All right.

Q. Did you make the following answer, "Yes—

THE COURT: One other thing, Mr. Fusaro. Of course where he asked the witness, as I think he did on one or two occasions, "Is that a fact?" Of course that is evidence in this hearing, his answer, that question and answer goes to the substance of it rather than to contradict a previous statement.

MR. PERMAN: Well—

THE COURT: In other words, there is a difference in asking a witness did you make such a statement and in then asking the witness, Well, is it a fact? Those two questions are entirely different, of course.

MR. PERMAN: I think there is a distinction, as Your Honor has pointed out, between those questions.

Q. Mr. Coe, did you make the following answer, "(A) Yes. (B) Temporary. (C) At this time I am unable to state my intention as to domicile" to this question: "If you have or had an apartment or tenement or place of residence in any state other than Massachusetts, do you still maintain it? Is it temporary or permanent? Do you intend to give up your domicile in this state?"

MR. MASON: I object.

Q. You may answer.

MR. FUSARO: I understand Your Honor has already ruled?

THE COURT: Yes.

MR. MASON: Exception.

WITNESS: I don't understand it was domicile.

Q. Did you state what I asked in my questions, that's all I asked you.

THE COURT: You are not asked now whether or not that was a fact,

you are asked whether or not you were asked that question and whether or not you made those answers.

WITNESS: That answer in there, yes I did.

Q. You recall this is your signature? A. Yes.

Q. Now I direct your attention to this particular answer over your signature—#9. Just read it to yourself, please. And I direct your attention to #9 in the interrogatories. Read the question to yourself, and read the answer. Were you a tenant?

Q. No, just read it to yourself. Have you read it?

A. Wait a minute. Yes.

Q. All right. Now did you make this answer: "(A) Yes. (B) Yes. (C) Temporary" to this question: "Were you a tenant of Apartment D-11 141 East 56th Street in New York City? Are you now? Is that a permanent or temporary residence?"

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

THE COURT: Do you understand the distinction when he says, "That is a fact?" He is now asking you whether or not that is true.

WITNESS: Well, that is true as far as it is in there. I cannot contradict my own signature.

THE COURT: You understand the distinction? He first asked you if you made the statement; his second question asked you is it a fact—in other words, is it true.

WITNESS: Well, that's the second question?

THE COURT: Yes.

WITNESS: It is so stated in there. Yes.

Q. And so was this other answer that you made here—that's true too, isn't it?

MR. PERMAN: Objection.

THE COURT: It isn't clear on the record. You are calling his attention now to which question?

MR. FUSARO: The previous one that I indicated to you.

THE COURT: Read that question so there will be no question about it.

Q. "If you had an apartment or tenement or place of residence in any state other than Massachusetts, do you still maintain it? Is it tempo-

rary or permanent? Do you intend to give your domicile in this state? And the answer: "(A) Yes. (B) Temporary. (C) At this time I am unable to state my intention as to domicile." That is true?

MR. PERMAN: Objection.

WITNESS: According to this, yes, according to this.

Q. That is true, I say?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. You said "Yes," that's right, isn't it? You said it, didn't you?

A. That's what it says here.

Q. You said "Yes" to that question? I want your answer. That is true, isn't it?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. All right.

MR. FUSARO: May I have a moment, if Your Honor please?

THE COURT: Yes. Do you want to take a recess?

MR. FUSARO: No, not unless Your Honor does.

(RECESS. HEARING RESUMED)

Q. Now Mr. Coe, when you gave answers to questions #5 and #9, you did so under the advice of your counsel, Mr. Perman? A. Yes.

Q. And your counsel, Mr. Perman, was the man who took your acknowledgment that they were true on that day they were signed here, April 30th, 1941? A. Yes.

Q. Now upon what date was it that you sold your home at 6 Boynton Street?

MR. PERMAN: Objection.

WITNESS: I think it was June 19—

MR. PERMAN: Wait a minute.

MR. FUSARO: Well, he has already testified about it; only I want to call his attention to the matter with respect to that situation. That has been in evidence the other day.

THE COURT: He has answered that particular question previously.

If it is just to call his attention—

Q. June 1944; that right? A. Yes.

Q. Now in the deed conveying the premises at 6 Boynton Street, you described yourself as of Worcester?

MR. PERMAN: I object.

THE COURT: It may run into the question of best evidence; but you may have the question if you produce the deed.

MR. FUSARO: I am going to; we are going to produce the record here showing that there was a deed.

THE COURT: If your objection goes to the question as to the best evidence—

MR. PERMAN: That is one of the grounds.

THE COURT: Unless you produce the deed later, I will strike it.

MR. FUSARO: All right, unless we produce the deed Your Honor may.

Q. In that deed conveying 6 Boynton Street you described yourself as of Worcester, did you not? A. The deed describes that.

Q. Pardon me. Did you describe yourself as of Worcester, sir?

MR. PERMAN: Objection.

THE COURT: I think his first answer is all right—the deed describes him of Worcester—I think that is an accurate answer.

Q. And that deed was prepared by your counsel, Mr. Perman?

A. Yes.

Q. And he took your acknowledgment on that deed? A. Yes.

Q. And that is the fact, isn't it? A. Yes.

Q. Now Mr. Coe, how many corporations do you own?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor said you may answer, sir.

THE COURT: Of course it is a little bit indefinite—the witness might not understand it. He might own a part of the stock in one corporation; he might own a controlling interest in another, and he might own all the stock but the necessary number of shares in someone else's name in another.

MR. FUSARO: I will follow Your Honor's suggestion.

MR. PERMAN: Is this on the question of domicile?

THE COURT: No, I don't think it is. There is also a petition for modification. It might shed some light on his net worth.

MR. FUSARO: That is what I am proceeding to do now.

MR. PERMAN: Do I understand his net worth is now in issue under the petition for modification? May I respectfully—

MR. FUSARO: Of course there isn't any question, Your Honor, but what we are entitled to show what this man's net worth may be in order that Your Honor may have evidence with respect to your petition for increased allowance. That is a very, very vital factor in this case.

THE COURT: If we reach that point, yes.

MR. FUSARO: That's right. Of course if Your Honor feels that on the evidence we are not entitled to an allowance by reason of this man's having obtained a valid divorce, of course that is a different situation. But we are entitled to put in all evidence with respect to all the issues raised by the pleadings.

MR. PERMAN: May I be heard, Your Honor.

THE COURT: Yes.

MR. PERMAN: It seems to me that the ordinary and usual course of procedure in a situation of this kind where there is admittedly a preliminary issue involved which if sustained would dispense with the necessity for any further hearings, that preliminary hearing being with respect to the Nevada hearings, including the effect of the decree based upon what had transpired, the effect on the written contract entered into between the parties under oath and under seal, which this petitioner herself has set forth in the contract to be fair and reasonable, are issues that ought to be determined first before we get into these other matters that may well eventually be wholly collateral and may eventually be without materiality.

THE COURT: Well, they won't be collateral in any event.

MR. PERMAN: They may be without any materiality at all.

THE COURT: That could be.

MR. PERMAN: The usual and ordinary practise, and I submit the sensible practise to be adopted in these circumstances would be, first, to determine all those preliminary issues. We still insist and we still maintain, if Your Honor please, there is before Your Honor the Nevada proceedings, because the Nevada proceedings were filed by counsel and made a part of the record. There is before Your Honor the plea in bar if—

THE COURT: Let's not make it too lengthy and get into what we got into yesterday—a two-hour discussion. Now I tried to have you put that in yesterday, the Nevada proceedings, and you have not done it yet.

MR. PERMAN: We had nothing to go forward on unless we go forward on our plea in bar.

MR. MASON: We offer to do that, Your Honor.

MR. PERMAN: We ask to suspend with the witness as of that point and the right to go ahead on our plea in bar and establish what we think we can establish to be a complete bar to these proceedings for contempt and modification.

THE COURT: Suppose you dispense now with the question of his net worth.

MR. FUSARO: Yes, Your Honor. If I may have a moment, Your Honor.

THE COURT: Yes.

Q. Mr. Coe, you are familiar with a corporation by the name of Tarbox Company? A. Yes.

Q. And that was incorporated under the laws of what state?

A. Massachusetts.

Q. I see. And you hold the majority of stock in that corporation, is that right? A. Yes.

Q. Now there is another corporation by the name of Tarbox Realty Company, is that right? A. What was the first one?

Q. Tarbox Company. A. That was the Tarbox Incorporated.

Q. I see; that was Tarbox I-n-c is it? A. I-n-c.

Q. So there won't be any confusion with Tarbox Inc., we will call it incorporated, was Tarbox Incorporated the first corporation you organized? A. Yes.

Q. And that was organized when? A. June 1939.

Q. And it was organized under the laws of what state?

A. State of New York.

Q. Now you organized another corporation after that time, did you not? A. Yes.

Q. And the correct name of the second corporation is what?

A. Tarbox Realty Company.

Q. And the Tarbox Realty Company was organized by you under the laws of Massachusetts, was it? A. Yes.

Q. What year? A. I think it was '44.

Q. Last year? A. Yes.

Q. I see. Was Mr. Perman counsel when you organized Tarbox Realty Company? A. Yes.

Q. And it was organized under his supervision and direction?

A. Under my direction.

Q. Under your direction. And who are stockholders of Tarbox Realty Company?

MR. PERMAN: I object.

THE COURT: I suppose you would have to show that he holds some office by which he would know all those facts.

MR. FUSARO: Yes, Your Honor.

Q. Do you hold office in the Tarbox Realty Company? A. Yes.

Q. What is your office? A. In the Central Building.

THE COURT: No. What office do you yourself hold in the corporation?

WITNESS: What office do I what?

THE COURT: What office do you hold—do you hold any office in the corporation, Tarbox Realty Company?

WITNESS: Yes.

THE COURT: What office?

WITNESS: At the Central Building.

THE COURT: No, you don't understand me.

WITNESS: Unless it is 30 Forest Street.

THE COURT: No. I mean president, secretary, treasurer do you hold any of those offices?

WITNESS: Oh, I know what you mean; yes.

THE COURT: Well, that is what Mr. Fusaro was asking you, whether you hold any one of those offices; not where the office was.

WITNESS: Yes.

Q. What office do you hold?? A. President and treasurer.

Q. And you hold the majority of stock in that corporation? A. Yes.

Q. And do you know who the other stockholders in that corporation are? A. Yes.

Q. Who are they? A. My wife.

Q. Mrs. Coe #2, you refer to? A. I said my wife.

Q. Well, for the record you are indicating Mrs. Coe #2? A. Yes.

Q. Who else? A. Mr. Perman

Q. What position does Mr. Perman hold in the corporation?

A. Clerk.

Q. Any other position? A. No.

Q. You hold how many shares in that corporation? A. I don't know.

Q. You don't know? How many shares does your wife hold, do you know?

MR. MASON: What is the bearing? I object, Your Honor.

THE COURT: He may answer if he knows.

WITNESS: I don't know.

Q. Do you know how many shares Mr. Perman holds? A. Holds one.

Q. Now what position do you hold with the Tarbox Inc.?

MR. PERMAN: Objection. Wait a minute. I was waiting to find out what the purpose of the examination was before I took objection to this line of inquiry, and I still don't know, and I think I ought to assert my rights to object to it.

THE COURT: Well, since I asked you to suspend this time, and for the time being only, with evidence of his financial condition; I think the inquiry is well taken.

MR. FUSARO: Very well, Your Honor.

MR. MCKEON: Do I understand that this witness is now to be suspended with so that the respondent may go forward?

THE COURT: Not necessarily that, because I don't know what else you seek to introduce.

MR. FUSARO: If Your Honor please, it was our intention to get from this witness whatever evidence we desired to introduce on the issues raised, on all the issues, and if it is Your Honor's judgment that I may be limited on one issue of this case—

THE COURT: Now let me say this: I personally would prefer to proceed in that manner, but I thought that the trial might proceed faster and there would be fewer objections if the evidence concerning, any evidence which would support the plea in bar was in the hearing.

MR. FUSARO: I would be glad to.

THE COURT: I thought it might take care of a good many exceptions that are being made and that the trial might proceed faster.

MR. MASON: May I respectfully request some observations by the Court—

MR. FUSARO: You don't mind if I complete addressing the Court? May I proceed, Your Honor?

THE COURT: All right; I will hear you.

MR. FUSARO: I assure you my associate and myself will gladly submit to Your Honor's suggestion with respect to procedure.

MR. MASON: I just wonder, in view of Your Honor's previous observation that you would prefer to continue hearing on all the issues, but merely to give us opportunity to introduce certain evidence to eliminate the number of objections, seems to preclude the possibility in Your Honor's mind that the plea in bar might be sustained and eliminate entirely the necessity for any evidence whatsoever.

THE COURT: Not at all.

MR. MASON: I assume if we were permitted to go on with the plea in bar Your Honor would rule on that plea in bar. Since we have not introduced the evidence yet there is possibility that Your Honor might sustain that plea.

THE COURT: That is very true.

MR. McKEON: I still am unable to comprehend whether counsel for the respondent want to have this witness suspended with and they go forward on their plea in bar.

MR. MASON: We are simply interested in the procedure on the plea in bar. We simply say that up to date, in our opinion, the trial has proceeded irregularly.

MR. McKEON: I'm not asking you that. Do you want to suspend with the witness and go forward on your plea in bar?

MR. MASON: I think that is entirely a matter for the Judge to determine and not for me to answer.

MR. McKEON: Have you no answer to it?

MR. MASON: I don't think I am obliged to answer that kind of question from you.

THE COURT: I will state it, Mr. McKeon. Perhaps if we leave out at this time testimony of the financial condition of this witness and his ability to pay any sum or any additional sum, or any lesser sum, be dispensed with until after we hear that. Now you may have other evidence from other witnesses, you may have other evidence that you seek to bring out from this witness. I don't know.

MR. FUSARO: I wanted to make sure that I understood Your Honor's ruling. Assuming that I have completed with this witness with respect

to that one phase of the case, namely, domicile, and they want to examine the witness, then I can call this witness back for any further testimony that we have in mind?

THE COURT: At a later time?

MR. FUSARO: Yes.

THE COURT: Oh yes indeed.

MR. FUSARO: If Your Honor decides that other evidence is admissible?

THE COURT: Yes.

MR. FUSARO: Very well; with that understanding you may inquire.
(Colloquy followed, off the record)

MR. McKEON: After adjudication Exhibit 2 was returned to me and I now have it in my possession and control.

MR. MASON: I am asking you to produce it.

MR. McKEON: I decline to produce it. I shall produce it at the proper time.

MR. MASON: Well, it is an exhibit in that case.

MR. McKEON: I just stated it was returned to me.

MR. MASON: Who returned it to you, Mr. McKeon?

MR. McKEON: I decline to answer it.

MR. PERMAN: Will you get the docket in 131205? I think we have a right to inquire whether there are any other exhibits or papers in connection with Case 131205 that are not with the rest of the documents that should be properly a part of this case. We are now looking for Exhibit 2, offered in evidence in 131205.

MR. DONOHUE, Register of Probate: That is 56. These were all checked over.

MR. PERMAN: Will you find Exhibit 2 for us?

MR. McKEON: I have just stated to the Court about Exhibit 2.

THE COURT: Mr. McKeon states that he has it. It was an exhibit in a previous hearing and I rule that it is not evidence in this case at this time, and not an exhibit in this case.

MR. PERMAN: Your Honor will note that we insist it was not only an exhibit but it was an instrument that was filed, and so docketed.

THE COURT: If that is true, that is an entirely different question.

MR. DONOHUE: You won't find it in that, Mr. Perman. We don't docket them in that way.

MR. PERMAN: I mean merely for the purpose of finding out what entries were made, and not for the purpose of offering this as an exhibit at this time. I direct Your Honor's attention to the wording on Exhibit 1, on the outside folder. You will observe it is numbered 56; that upon top is Case 131205, Katherine C. Coe vs. Martin V. B. Coe, Exemplified copies. Now there is something that follows after that—I can't read it.

MR. DONOHUE: "NC"

MR. PERMAN: Underneath that File Oct. 15, 1943. Then Your Honor will observe when it is opened up, on the inside, on the top margin appears Exhibit 1. On the other side appears a reference, the name S. Perman, indicating who filed and offered the record in evidence. Now I would like to check the docket, if I may, to see what entries were made in connection—

THE COURT: Why don't you simplify it by asking the Register how—

MR. DONOHUE: It is a voluminous record. Have you got the records of Alan Bible?

MR. PERMAN: Aren't those with the papers here? Will you check those and see if they are present?

MR. MCKEON: Is there any good reason for this interruption, Your Honor.

MR. MASON: I think there is an excellent reason for this inquiry, Your Honor.

MR. PERMAN: Will you check and see if those depositions are there?

MR. DONOHUE: No, they are not.

THE COURT: I don't know yet what you are trying to—

MR. PERMAN: The original records of the case are not with the papers, are not on file as they should have been, properly so. I have ascertained by admission of counsel that he has some of these records, as we say, improperly.

THE COURT: Well, I don't find that it is improper at this time.

MR. PERMAN: I have to except to that ruling, if Your Honor please.

THE COURT: Mr. Perman, why don't you ask the Register for what you are seeking to find and let him look at the docket.

MR. DONOHUE: Everything marked off here—that checkmark is what I put on the records. The exhibits were here, that I am pretty positive of, because Miss Gannon told me they were. Where is the Alan Bible record?

MR. MASON: We don't keep that.

MR. PERMAN: It was in there. Is it there now?

MR. DONOHUE: No it isn't. I checked them off and I put them right in that envelope. It isn't there. It is a big folder with blue like that on it (indicating).

THE COURT: What is it they are looking for?

MR. DONOHUE: Well, I am looking for the deposition of Alan Bible and of course there were a number of exhibits tacked inside there.

MR. MASON: You cannot locate the envelope?

MR. DONOHUE: No, I cannot find it.

THE COURT: Whom does the record show it was filed by?

MR. DONOHUE: These were interrogatories filed in behalf of the respondent by Alan Bible for the purposes of taking deposition. Now that is missing, together with two or three exhibits.

THE COURT: Is that what you have been looking for?

MR. MASON: No.

MR. PERMAN: We were looking for record or document that was filed, and we are referring to record of the Nevada proceedings that was filed and offered in evidence by the petitioner. In the course of our search to determine where that document was, we have now ascertained that depositions that should have been properly in the file are not in the file.

THE COURT: Well, we haven't reached that point yet, have we?

MR. MASON: I think it is important, Your Honor, to know whether the file is here.

THE COURT: I think it is important to know whether the file is here.

MR. PERMAN: Whether anything is missing, and what the circumstances are.

MR. FUSARO: Well, Mr. Perman, haven't you a copy of the Nevada proceedings?

MR. MASON: We claim now, Your Honor, there is missing from the record a paper which was filed in this case, 131205, and which counsel for the respondent now claims is in his possession, or the counsel for the petitioner claims it is in his possession, apparently obtained from this Court in some manner. I will ask the Court at this time, in fairness to all parties, to direct counsel for the petitioner to return any papers withdrawn from the files of the Probate Court, if he has them in his possession.

THE COURT: Well, it makes a great deal of difference whether it was taken from the files of the Probate Court—of course I will order him to return such a paper. But if it was an exhibit that he offered in evidence and did not become part of the file I will not order him at this time to return it to the file, as it was not a part of the—

MR. FUSARO: Mr. Perman, have you a copy of the—

MR. MASON: I wish you wouldn't interrupt.

MR. FUSARO: I asked Mr. Perman a question and I think I am entitled to an answer in order that the trial may proceed.

MR. MASON: May I be heard?

THE COURT: I cannot hear two of you. You may have that question.

MR. FUSARO: I asked it before he addressed Your Honor, and from what I saw and heard Mr. Mason told Mr. Perman not to answer the question. Now I ask Your Honor to make inquiry of Mr. Perman to determine whether or not he has copy.

MR. MASON: Yes, I have a copy, and the copy is matter of record in this case.

MR. FUSARO: Thank you very much, sir.

MR. PERMAN: In connection with what the status of the record was that was filed and offered in evidence by the petitioner I direct Your Honor's attention to the record beginning on Page 58, the report of findings on material facts made by Judge Wahlstrom. On Page 59, the very last sentence, "At the same time he (referring to counsel for the respondent, myself) filed," and I ask Your Honor to take particular note of that word "what is entitled exemplified copies of the Nevada proceedings, and the petitioner's counsel then filed" and I direct Your Honor's attention specifically to that word "exemplified copies of the Nevada proceedings together with the transcript of the evidence and the agreement aforementioned." Going back, Your Honor, to Page 58 so as to clarify the proceedings that took place before Judge Wahlstrom, the second sentence, "The only evidence introduced consisted of documents." So we have here a situation where documents were both filed and offered in evidence. Now, if Your Honor please, if you will observe substantiating that Page 15, you will note reference to Exhibit 1 offered in evidence by M. V. B. Goe. Now on Page 49, Your Honor, I direct Your Honor's attention to the very last notation referring to the record of the Nevada proceedings, which were the petitioner's, the notation filed October 15, 1943.

MR. MCKEON: Mr. Donohue—

MR. PERMAN: Wait a minute.

MR. MASON: May we suspend with this witness for the purpose of locating or ascertaining first whether a paper which should have been filed in this case and which we allege was filed and was on file has been removed from the files and the present whereabouts of that paper which is important to the respondent for the purpose of pressing his case?

MR. MCKEON: May it please the Court, in the reference to Page 59 of the 2nd record I direct your attention to the last sentence which states that the respondent filed not exemplified copies but what is entitled exemplified copies of the Nevada proceedings, and the petitioner's counsel then filed not what is entitled exemplified copies but exemplified copies. And on Page 58 the distinction is made between Exhibit 1 and Exhibit 2, and that Exhibit 2, the petitioner's exhibit, purports to be an exemplified copy of the proceedings containing also a transcript of the evidence and a copy of an agreement between the parties, and so forth. So that Exhibit 1, which is the respondent's exhibit, is and was merely a partial and incomplete record of the proceedings in Nevada and Exhibit 2 was and is a complete record of those proceedings. I think it proper to suggest that that is the reason for this shadow boxing, that the respondent in offering Exhibit 1 expects that we shall object. Beyond that, the exhibit is not lost; I have just placed it under the direction and control of the Court, and since it is a group of papers owned by the petitioner and since it was a mere exhibit in a closed case, it was thought proper that the petitioner should have control of that exhibit until the appropriate time came for offering it. Now I suggest that with the statement that I have it, that places it under the direction and control of Your Honor, and after that statement I will do whatever you suggest. I will either retain control of it so that we can offer it as the appropriate time or, if you think it is proper and say so, I will produce it forthwith.

THE COURT: Well, if you have in your possession any evidence that might be material to their case and if they wish it, and if it might shed light upon it and if they now wish to introduce it—

MR. MCKEON: Right at this minute?

THE COURT: Right at this minute, they may have it for that purpose. If it appears that it is a part of the file in this case—

MR. McKEON: I don't think it is a part of the file.

THE COURT: Well, I don't know; I haven't sufficient information.

MR. MASON: If it is a part of the file, I wonder by whom, or upon what basis Mr. McKeon determined of his own right that it was proper for him to withdraw anything on file in this case, and by whom it was delivered to him.

THE COURT: It doesn't appear he determined his own right.

MR. PERMAN: Well, he said it.

THE COURT: I don't know what it is, and he may or may not be right. I don't know.

MR. PERMAN: We will find that in just a minute. The respondent moves that the record of the proceedings that was before the Supreme Judicial Court in the case of Katherine C. Coe vs. Martin V. B. Coe and by which decision of the Supreme Court was that the cases be heard further in accordance with its opinion, that the entire record be incorporated and made a part of the record before Your Honor.

MR. McKEON: I object.

THE COURT: Your motion is denied.

MR. PERMAN: Exception.

THE COURT: One of the chief reasons for denying your motion is that there is a finding of fact on the evidence that was produced at the previous hearing. That is one of the reasons.

MR. PERMAN: Well, I think that is properly before Your Honor.

THE COURT: I have ruled that this is a hearing de novo. He made certain findings of fact and on that he made rulings of law, which rulings were found to be in error. Now it seems to me that it would be highly improper to include this whole record as a part of this proceedings.

MR. PERMAN: The respondent objects and excepts.

MR. McKEON: May I make a direct inquiry of counsel, if Your Honor please. Whether they desire at this time, if Exhibit 2 in a closed case is made available, to offer it now or at some later time?

THE COURT: I have made it available to them.

MR. PERMAN: I think, if Your Honor please, so that there may be no question about the position of the respondent here, we are not seeking of this petitioner any information on evidence which we regard as being helpful to our case. What we want and what we insist on is the benefit

of all documents, papers and records that are properly part of this cause and that should normally and naturally be in the custody of the Probate Court, and not in the custody of counsel.

THE COURT: Mr. Perman, I haven't seen the papers; I don't know what it is, and I don't know that it is a part of the file, and I have no means of knowing.

MR. PERMAN: We are prepared to go forward and show that by the docket entries those records of the Nevada proceedings were filed. We are now prepared to go forward and show that.

THE COURT: Mr. Perman, Mr. McKeon has offered to produce them, offered to produce them for inspection, and you still say you don't want them?

MR. MASON: No, we do not take that position.

MR. MCKEON: I now present Exhibit 2 in the former case to the Register, and counsel for the respondent may do as they please about it.

MR. MASON: I think after a long time Mr. McKeon is now doing what he should have done a long time ago.

MR. MCKEON: I move that be stricken. You haven't proved any foundation to justify that observation.

THE COURT: I don't necessarily reach that conclusion, but since the remarks are in, let them all be in.

MR. MASON: May we examine that, Mr. Donohue?

MR. DONOHUE: May I mark it first.

MR. MASON: I wish to call your Honor's attention to the instrument produced here and the notation which appears on the cover of that instrument which says, "Filed October 15, 1943."

MR. MCKEON: Of course that isn't final.

MR. MASON: We will at this time too ask Your Honor to direct counsel for the petitioner that he has no right to remove anything that has been filed in this case from the records of the Probate Court.

MR. MCKEON: I don't need that instruction.

THE COURT: Well, I will take care of what instructions to give. Now it is one o'clock and we will suspend. I will inspect this later.

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION

MR. MASON: Mr. Donohue is expected back in a moment, Your Honor.

THE COURT: Was there something you wanted of him?

MR. MASON: Yes, Your Honor. May I look at this instrument, Your Honor.

THE COURT: Yes.

MR. FUSARO: If Your Honor please, prior to the noon recess I requested that we suspend for a moment with the respondent in order that I might put on a witness in respect to the deed of 6 Boynton Street. While I was waiting for the witness to appear, there was discussion on another matter.

THE COURT: I think you may put that in.

JOHN J. MULLAN, JR. testified as follows:

Q. BY MR. FUSARO: Have you been sworn, Mr. Mullan.

A. I haven't.

(Witness sworn by Court)

Q. What is your name, sir? A. John J. Mullan, Jr.

Q. And what is your position, Mr. Mullan?

A. Acting Register of Deeds for Worcester District.

Q. And you have been Acting Register of Deeds for the Worcester District for what period of time? A. Since December 22, 1942.

Q. And your office is located here in the Court House, is it?

A. That's right.

Q. And you have under your supervision various deeds that are recorded in accordance with the provisions of law? A. That is correct.

MR. PERMAN: I raise no objections to his qualifications.

Q. Have you the record of a deed that was recorded from Martin V. B. Coe in June of 1944? A. Do you have the page?

Q. No, I haven't. I think it was marked off here. A. I have.

Q. And this deed was recorded on what day? A. June 5th, 1944.

Q. And you make a record of a deed that is recorded in accordance with law by having a photostatic copy of the same? A. Some we do.

Q. In this particular case? A. This is a photostatic copy.

Q. And the grantor is recited in this deed as being whom?

A. Martin Van Buren Coe.

Q. Of where? A. Of Worcester.

Q. What county? A. Worcester County.

Q. And Commonwealth of Massachusetts, that right?

A. Commonwealth of Massachusetts, correct.

Q. And does that deed convey certain premises on Boynton Street in the City of Worcester? A. It does.

Q. And it bears the signatures of whom?

A. Martin V. B. Coe, Dawn Allen Coe.

Q. And is that witnessed? A. Witnessed by Samuel Perman.

Q. And does that instrument bear an acknowledgment of the grantor, Martin Van Buren Coe? A. It does.

Q. And before whom as a Notary Public? A. Samuel Perman.

Q. And the acknowledgment is dated when? A. June 5th, 1944.

MR. FUSARO: That is all.

(Mr. Mason looks at instrument recorded in book)

Q. One further question. Did I ask you about the book and page where that particular deed is recorded? A. You did.

Q. Will you let us have it for the record? A. Book 2918, Page 95.

MR. FUSARO: No further questions; thank you very much. Now if Your Honor please, I respectfully request leave to suspend with the respondent and with any further evidence that we may have in order that the respondent may proceed to introduce such evidence as he desires with respect to his plea that he has filed in this case.

MR. MASON: Mr. Donohue, please, I don't know whether Mr. Donohue has been sworn or not, Your Honor.

THE COURT: He has.

F. JOSEPH DONOHUE testified further as follows:—

Q. BY MR. MASON: Your full name is Joseph F. Donohue?

A. No sir, F. Joseph Donohue.

Q. And what is your official position?

MR. FUSARO: Well, there is no question—

WITNESS: Register of Probate and Insolvency.

Q. And Probate Court for the County of Worcester?

A. That is correct.

Q. I show you a volume called Series B, Docket 110; and ask you whether that is the official docket entry book of the Probate Court in the County of Worcester? A. It is.

Q. On Page 435 of this volume 110 is there a heading called #131205, Coe, Katherine, vs. Martin V. B.? A. That is correct.

Q. And in these volumes, of which this is one, are there reported the instruments which are filed in cases pending in this Court?

A. That is correct.

Q. And the instruments that are filed in cases pending in this Court are in the custody and control of the Court, that correct? A. No.

Q. Of the Register? A. That is correct.

Q. On Page 435, under the case heading which I have just indicated, do there appear records of certain papers filed in that cause?

A. That is correct.

Q. And under date of October 15th, 1943 do there appear two notations—exemplified copies, and what is the mark after exemplified copies?

A. "NC."

Q. What does that mean? A. Well, might mean otherwise called.

Q. Does that indicate that exemplified copies were filed on October 15, 1943 in this cause? A. That is correct.

Q. And I show you an instrument on the outside cover of which appear the following "Case 131205, Katherine C. Coe vs. Martin V. B. Coe, exemplified copies NC filed October 15, 1943"? A. That is correct.

Q. And is that the instrument which was filed with the papers, the record in this case in the Probate Court for the County of Worcester?

MR. McKEON: May I look at it a minute?

MR. MASON: You may examine it, Mr. McKeon.

MR. McKEON: All right.

WITNESS: Yes, that is correct. We have a D signifying it has been docketed.

Q. You say on the outside cover if a case paper has been filed and docketed a mark is made on the paper? A. That is correct, docketed.

Q. The letter D in pen, in the practise of your office, indicated that the paper has been docketed? A. That is correct.

Q. May I ask you too, whether on that instrument which you have just testified about there appears in ink the word "Ex. 2"?

A. That is correct.

Q. And in pencil on the right hand side, "F. P. McKeon"?

A. That is correct.

Q. And I show you another instrument with the same legend on the cover of the instrument, identical with the description I gave as to the last instrument you examined? A. That is correct.

Q. And does the letter D appear on that also? A. That is true.

Q. Indicating that it had been docketed? A. Correct.

Q. And on the front of that instrument does there appear the words, "Ex. 1"? A. That is true.

Q. And on the right hand side in pencil, "S. Perman"?

A. That is right.

Q. And can you tell us whether these are the two instruments which are docketed in this volume 110 on Page 35, described as "exemplified"?

A. I believe they were filed as exhibits and then docketed or may be docketed filed as exhibits. I cannot tell which.

MR. MASON: I ask that be stricken.

MR. McKEON: I move it stand.

THE COURT: It may stand.

Q. My question, Mr. Donohue, was whether these are the two instruments.

A. Well, they are marked "exemplified copies," if that is what you mean, on the outside, yes.

Q. And I am asking you whether these are the two instruments which are described in your docket instrument, in Volume 110 under date of October 15, described in the docket entries as "exemplified NC"?

A. That is right, they are.

Q. And those are the papers that were on file in the records of your office? A. That is right.

Q. Now I notice—

THE COURT: Pardon me. I don't take it that that was your previous question. You said, "I am asking you," but I understood this later question as a little bit different than your previous question. If it was the same I would have stricken his answer.

MR. MASON: Your Honor, may I have the question and answer?

THE COURT: You may have understood it as the same, but I didn't

take it as the same, unless I am mistaken. What I mean is, it doesn't seem to me that your last question was the same as your previous question.

MR. MASON: With reference to the previous question I think my objection or reason for asking that the Court have it stricken on the record was that it was not responsive to the question; and I still think so.

THE COURT: It wouldn't have been responsive to your second question, I will grant you that. And that's why I stated I would have stricken it if it was in response to your second question. However, his last answer is all right; it is responsive.

Q. And I ask you, Mr. Register, whether you received this forenoon from Mr. McKeon the instrument, which is one of the exemplified copies, on which appears the words Exhibit 2?

A. It happened in the presence of the Court and I believe everyone in this room at the present time.

Q. By whom was it handed to you? **A.** By Mr. McKeon.

Q. And prior to that being handed to you by Mr. McKeon, was that in the files of the Registry of Probate, to your knowledge?

A. It was at one time, because it was docketed, Mr. Mason.

Q. And that had been removed from the files by Mr. McKeon?

A. I couldn't say that, Mr. Mason. I don't know if Mr. McKeon removed it or not.

Q. Well, did you deliver that instrument to Mr. McKeon prior to his delivering it over to you? **A.** No, I did not.

MR. MASON: That is all.

MR. MCKEON: May I have those, please?

F. JOSEPH DONOHUE, resuming stand, testified further as follows:

Q. **BY MR. MCKEON:** I take it that as a matter of law it is not your duty after a case is closed to keep on the files of the Court exhibits used evidence in that case, is that correct?

MR. PERMAN: I object.

MR. MASON: I object.

THE COURT: Your question asks this witness what is the law. You may ask him what is his custom.

Q. Is it the practise and custom, your practise and custom as Register of Probate after a case is closed to keep on the files of the Court exhibits that were used in evidence in that case?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: If the attorneys request the exhibits they may have them. Judge Atwood has asked me, if I may answer, a good many times to turn over exhibits.

Q. And that is applicable to Exhibit 2 which has been referred to?

MR. MASON: I object.

WITNESS: It would be, yes; if this was an exhibit, it would be.

Q. Well, there are indications on the paper itself that it was an exhibit?

A. Judge Wahlstrom's handwriting, that is, he indicates it was Exhibit #2.

Q. And do you know whose handwriting that is, "F. P. McKeon"?

A. May I examine the other one, please? I can't tell whose handwriting it is, no. That is Judge Wahlstrom's (indicating). That may be Judge Wahlstrom's, I don't know. This definitely, "S. Perman" is Judge Wahlstrom's. The other one may be; I don't know.

Q. Perhaps you would be able to state that "F. P. McKeon" is not written in my scrawling?

A. Oh no, definitely not. But I recognize "S. Perman" as being definitely Judge Wahlstrom's.

(Court looks at document)

Q. Now with reference to the deposition, until recess it was in this pack? A. That is correct.

Q. But it may be in papers—

A. It might be in the vault, because papers were taken in the vault last night, and some of them were out and some of them were in the package. I try to keep them together.

Q. BY MR. MASON: Is it the practise in your office, Mr. Donohue, to file and docket exhibits that are introduced in evidence in the trial of causes before the trial Court? A. No.

Q. And when an instrument is marked "Filed" and docketed, it becomes a part of the records of the case pending in your Court as a part of the records in your custody and control as Register?

MR. McKEON: I object.

THE COURT: That is excluded.

MR. MASON: I offer to prove, Your Honor that the response to that question would have been "Yes."

THE COURT: Well, I excluded it because you are asking this witness for a conclusion of law and not a conclusion of fact, and not as to custom.

MR. MASON: I except to that, Your Honor.

Q. I ask you now whether it is the custom of your office to allow instruments which are filed and docketed to be removed from the files without the permission of someone in authority in the Probate Court?

MR. McKEON: I object.

THE COURT: Well, if he is asking him as to custom, why he may have that.

WITNESS: There was a fine of \$10,000 for surreptitiously taking papers from the Probate Court. That was Mr. Donohue's bill filed in the Legislature two and a half years ago.

Q. That was Mr. F. Joseph Donohue's bill? A. That is right.

Q. BY THE COURT: Let me ask you one question. Do you know whether that particular paper that has been inquired about was offered for filing in the Registry of Probate or if it came into the file by reason of being offered as an exhibit in the trial?

A. I couldn't answer that question.

THE COURT: That is all.

MR. McKEON: I think record #2 shows that it came in as Pages 65 and 66 on the second record; and in that record it also states that Mr. Perman said: "To keep the record clear let it be noted there has been presented and offered as evidence (etc., reading aloud from record).

THE COURT: Well, of course it is obvious if it was offered as an exhibit in the trial of the case and got into the file in that manner, it wouldn't make any difference whether it was docketed or not, it still remains an exhibit. If somebody offered it for filing it would be a part of the file.

MR. MASON: If that is a ruling, Your Honor, I would like to take an exception to that ruling.

THE COURT: You may have it.

MR. PERMAN: May I point out further in connection with what has been said in Your Honor's direction to Page 65 of the record, Your Honor will note that there are repeated references to a conference that preceded the taking of argument by counsel on the motion to dismiss, and Your Honor will note that there is a reference to past events, it was at that prior conference that these exhibits were filed and made part of the record and offered in evidence by respective counsel. The findings of Judge Wahlstrom with reference to ~~that~~ specifically pointed that out.

THE COURT: However, it is here in any event.

MR. PERMAN: Now if Your Honor please, in proceeding on the plea in bar, I have made an attempt to have the record of this cause that went up to the Supreme Judicial Court incorporated by reference and made a part of the record here. That has been denied to the respondent, subject to his exception. If I make ask a few questions of Mr. Donohue?

THE COURT: Yes, go ahead.

F. JOSEPH DONOHUE resumes stand and testifies further as follows:

Q. BY MR. PERMAN: You are Mr. F. Joseph Donohue?

A. That is correct.

Q. And you are the same Mr. F. Joseph Donohue that testified just before? A. That is correct.

Q. I show you this record on which appears the number 835.

THE COURT: May I ask the purpose of this?

MR. PERMAN: I am going to offer it in evidence, Your Honor.

THE COURT: Well, there is no question that that is a record—or is there? Why take all this time on it?

MR. PERMAN: I just wanted to lay the groundwork. If there is no dispute about its being the record of this cause containing the proper papers—

THE COURT: I don't think there is any question.

MR. MASON: Is there any question about it?

MR. FUSARO: We object to the record. We are not raising any question with respect to that being a record.

THE COURT: There is no question raised as to its being a record;

there is no question as to its being the record that you offered before that I excluded. And I exclude it again.

MR. PERMAN: The respondent excepts to it. The respondent now, if Your Honor please—

THE COURT: Now understand me correctly. There are many things in the record that you may offer separately; but as to the whole record I excluded it. Is that clear?

MR. PERMAN: Yes, except, I don't know, perhaps if I had some indication from Your Honor as to what Your Honor considers objectionable in here it might be rectified by agreement. Now I don't know. As it stands now, I am forced to offer the entire record. I don't know what Your Honor has in mind with reference—

MR. McKEON: If Your Honor please—pardon me, I don't mean to interrupt you.

MR. PERMAN: Go ahead.

MR. McKEON: I would assume if counsel for the respondent wanted to raise a question he would do it properly and not invite the Court to give him a general instruction as to what he should or shouldn't do.

MR. PERMAN: I might point out, if Your Honor please, that I made the suggestion—

THE COURT: Well, I take it, Mr. McKeon, that the question was properly asked. I think he had a right to ask.

MR. McKEON: What I had in mind was perhaps we ought to have first opportunity to object and to raise some question if he raised some specific thing. Your Honor now points out perhaps—

THE COURT: Well, I have already excluded it.

MR. McKEON: That's right, so there is no question before Your Honor now.

THE COURT: Well, he asked the question of me.

MR. McKEON: That's right. But if Your Honor understands what I am trying to state—perhaps I'm not stating it clearly, but if he offered some specific thing we would either agree and let that go in or raise some question about it; which seems to me to be the regular way. He isn't asking you, as I understand it on what grounds you have excluded the whole thing.

THE COURT: That is right. I said to him there is much in here I

wouldn't exclude—there is a great deal in here, in fact, that I would not exclude.

MR. McKEON: Well, I think Your Honor understands our position.

THE COURT: Just one thing. There is much in here that is mere matter of pleadings, and pleadings should not be made a part of the evidence. There is a finding of fact by another Judge made on different evidence, and that should not be made a part of the evidence in this case. And that without going into all of it. There are statements and arguments and rulings made by another Judge which I do not think should be made a part of the evidence in this case. I think there is much in here that would be very helpful; very helpful.

MR. PERMAN: It was my thought, if Your Honor please, in obtaining ruling that this was in the interests of clarity and interests of economy, and in the interests of avoiding a bulky record, that although as we maintain this is before Your Honor, in view of Your Honor's ruling, that it be made a part of this record by reference and incorporated, made a part by reference. I think that probably would have been the simplest way.

MR. MASON: Well, you mean—may I have that read?

(Stenographer reads aloud Mr. Perman's statement)

MR. PERMAN: To clarify my statement, I want to make it clear I did not want to intimate that there was any ruling by Your Honor that there was—

THE COURT: I did not so understand.

MR. PERMAN: Mr. Mason thought there might be some confusion with reference to that, and I wanted to clarify it. In order to properly proceed on the plea in bar my next position would naturally be that of offering this in evidence. If as I understand it has already been excluded in evidence and in the absence of being able to come to some understanding, I am forced to take the position of making an offer of proof, which of course in my opinion would extremely complicate the record; but I don't quite see any other alternative.

THE COURT: Well, I think I stated my reasons, Mr. Perman, for excluding; I think I stated it clearly. It would seem to me that it is obvious that the whole thing could not be admitted in evidence, in toto. I don't wish to shut a lawyer off from an offer of proof—

MR. PERMAN: I understand that.

THE COURT: But I want to get on with this.

MR. PERMAN: I am trying to get on with this, too.

THE COURT: If you are going to take a half hour or an hour to make an offer of proof on something that seems to be so obvious, while I should dislike to very much, I think I would say no.

MR. MCKEON: Would Your Honor be willing to consider the record itself as the offer of proof? Beyond that he wouldn't be entitled to go on any offer of proof.

MR. MASON: I think our position ought to be made clear to Your Honor, because it may seem obvious to Your Honor but it does not seem so obvious to me that the problem is quite as simple as was indicated.

THE COURT: Shall I repeat what I said?

MR. MASON: No, it was clear what you said; but it wasn't obvious to me that it was so clear that many things in this record were not competent evidence. Because our position, the position of the respondent in this case is—and we go back to our original problem that haunts us all through this case—that this is not a de novo—

MR. FUSARO: I object to any reiteration at this time of their position at this time.

MR. MASON: And our position is that the entire record in this case is before Your Honor, and was from the time Your Honor first came into the case.

MR. MCKEON: For the time being, may I suggest it be marked for identification, that it may later be ruled upon?

THE COURT: No, I have ruled upon it; that is, I have excluded it.

MR. MCKEON: That is correct; but they keep reiterating the same thing over again. We ought to arrive at the end of the race as far as they are concerned, it seems to me.

MR. MASON: We cannot help reiterating it as the problem arises.

THE COURT: Well, I have already ruled that this record is not part of the record in this case, there is much in it that does not belong in this case and cannot be made a part of this case, and I have excluded the record for that reason.

MR. MASON: We are entitled to take a different position as a matter of law and claim.

THE COURT: Yes; you have taken an exception.

MR. MASON: To preserve our exception, let us make an offer of proof.

THE COURT: Would you like more than an exception to the same thing?

MR. MASON: No, but when we offer evidence and it is excluded, our exception is of no great value unless we make offer of proof, as I understand it.

THE COURT: Well, you have offered the record itself. There isn't any doubt what that is.

MR. MASON: Will Your Honor agree—I don't mean "agree," but permit this record to be marked as an exhibit in the case for identification, as constituting the offer of proof?

THE COURT: Yes, yes.

MR. MASON: Which the respondent in this case at this time makes as a result of your exclusion?

THE COURT: Yes.

MR. McKEON: Not as an exhibit, though?

THE COURT: No.

MR. McKEON: But for identification of the offer of proof?

THE COURT: Yes.

MR. MASON: That is perfectly agreeable to counsel. We will furnish the Court very shortly with an unmarked copy, to be marked for identification.

THE COURT: All right.

MR. PERMAN: May I have just a minute to check an exhibit which I shall offer in just a minute, if Your Honor please?

THE COURT: Yes.

(Sheriff brings in unmarked copy of record)

THE COURT: This is an extra copy that they have?

SHERIFF: Yes sir, the last one Mr. Donohue has.

THE COURT: The last one. (MARKED FOR IDENTIFICATION and as offered by respondent)

MR. PERMAN: I want to offer, if Your Honor please, an instrument which was the subject matter of the testimony by Mr. Donohue and which is referred to in the record marked for identification on Page 27 as Exhibit 2 offered in evidence by Katherine C. Coe, and the same exhibit which I referred to in my plea in bar.

THE COURT: And what is it?

MR. PERMAN: I offer that.

MR. MASON: Describe it.

THE COURT: I don't think you described it; I don't know what it is.

MR. PERMAN: The exhibit is a record of the Nevada proceedings, authenticated—

THE COURT: Pardon me. I am going to exclude that as an exhibit at this time. It may soon be; but it is not now.

MR. MASON: The instrument, the offered instrument.

THE COURT: The offered papers do you mean? You call it an exhibit.

MR. PERMAN: Oh, the instrument is an authenticated copy of proceedings in Nevada, authenticated on the 27th day of October 1942 by Marietta Legate, County Clerk, of the First Judicial Court for the State of Nevada in and for the County of Ormsby. It contains also the signature of Clark J. Guild, presiding Judge of the First Judicial District Court for the State of Nevada in and for the County of Ormsby.

THE COURT: Oh, you need not go through and read each page. I will do that. But describe in general what it is.

MR. PERMAN: In general these are a transcript of proceedings in the First Judicial District Court of the State of Nevada in and for the County of Ormsby, comprising in the order in which it appears in this instrument in the case of Martin V. B. Coe, Plaintiff, vs. Katherine C. Coe, Defendant, testimony of Martin V. B. Coe, testimony of one Nancy Sauer, testimony of Mrs. Hazel Reed, findings of fact, conclusions of law, and judgment made by Clark G. Guild, District Court, District Judge of said Court, in that action on the 19th day of September 1942, in substance dissolving the marriage contract between the parties, ratifying and confirming and adopting a certain written agreement entered into between the parties. There is also included in the instrument, next in order, an agreement entered into between Martin V. B. Coe and Katherine C. Coe on the 16th day of September, subscribed to under oath by both parties, in substance releasing, discharging, by each of the parties to the other, from all obligations against their respective estates, except for such provisions as are contained in the contract itself, and providing in substance for the payment by Mr. Coe, the petitioner in this cause, to Katherine C.

Coe, the respondent in this case, the sum of \$7500, for which Katherine C. Coe acknowledged payment; and the further sum of \$35 each week for certain periods provided for in the agreement; containing the further covenant that Katherine C. Coe discharges Martin V. B. Coe from all further obligations of support except as are contained in the contract, and the covenant that the covenants herein shall remain in full force and effect whether the parties shall assume the marital relations and live together as man and wife or whether as now they live separate and apart; or whether . . . regardless of where such degree shall be obtained or regardless upon what ground the same shall be based. There appears in this instrument in the Nevada Court between the parties already referred to an answer and cross complaint signed by Withers & Edwards, by W. H. Edwards, attorney for defendant, the defendant in that case being Katherine C. Coe, and subscribed and sworn to under oath, in which answer—

MR. McKEON: Pardon me. May I interrupt. Isn't this an awfully long way to go ahead and describe—

THE COURT: I think I will have to take some of the blame. He did offer it without describing it at all, and I thought he ought to describe it; and perhaps I am to blame for the length of this in this instance.

MR. PERMAN: I shall be glad to merely refer to the various instruments by name and let Your Honor—

THE COURT: I think you may do that.

MR. PERMAN: There is an answer and cross complaint signed by counsel for the defendant, the present petitioner, subscribed by her under oath; a reply in that action in Nevada on behalf of Martin V. B. Coe; a demurrer in that action in Nevada filed on behalf of the petitioner in this case in this Court, together with an order for publication of summons dated July 27, 1942; together with an affidavit for publication of summons subscribed to by Mr. Coe on the 24th day of July 1942, together with a complaint by Mr. Coe subscribed to on the 24th day of July 1942.

MR. McKEON: I object to its being received at this time.

MR. PERMAN: I offer it.

THE COURT: What is the objection, Mr. McKeon?

MR. McKEON: Well, to be offered it doesn't yet appear that the proper foundation is laid in view of the pleadings here, and the intro-

duction of a record which as of present standing . . . any higher dignity than if it were signed by the postmaster of Reno, Nevada, or some other city. Moreover it has been misinterpreted through statement of counsel in attempting to identify it. It does not appear where it came from, how ever it came, whether it came from any Court, who requested it.

THE COURT: Well, Mr. McKeon, it appears on its face that it is properly authenticated and I think that the pleadings, as I understand them, raise the issue.

MR. McKEON: I agree there is no doubt about that. My chief point is it hasn't been put in evidence that this came from Nevada; it may have come from anywhere.

MR. MASON: Mr. McKeon is the last man to raise that question.

MR. McKEON: I am objecting at this moment on the ground that no foundation was laid for it. At a later time it might be perfectly competent.

THE COURT: Well, as I said, it appears to me, Mr. McKeon, it appears on its face that it is properly authenticated. Do you question that?

MR. McKEON: At this moment, yes. I could have that all made up right here in Worcester, without any connection with Nevada at all.

MR. MASON: It so happens that the instrument happens to be the identical instrument which Mr. McKeon himself offered in evidence at the prior hearing before Judge Wahlstrom, and if it was not obtained from Nevada he committed a fraud. So I think that he should straighten that out now.

MR. McKEON: Well of course lapse of time makes some difference. If you will pardon me and keep your mind open, you will see the objection is that no proper foundation has been laid for—

MR. MASON: It seems to me, Your Honor, the identity of—

MR. McKEON: There has been no foundation laid for the introduction of that document.

MR. PERMAN: You just said this afternoon that this was a properly authenticated document—within the past two hours.

MR. FUSARO: You have a copy, have you?

MR. PERMAN: Yes, right in the record.

MR. FUSARO: Why don't you offer your copy?

THE COURT: Mr. McKeon, it appears to me to be regular on its face,

and I don't think it is necessary to require the county clerk of the County of Ormsby in the State of Nevada to come here personally, is it?

MR. McKEON: No. I have stated my position. I will be glad to accept your ruling on it.

THE COURT: It is admitted. This has been an exhibit before and I want to know the marking on it. Has anybody any suggestion?

MR. McKEON: Yes. Exhibit F. P. McKeon.

THE COURT: Are you serious?

MR. McKEON: I am serious in the sense it ought to be identified as my exhibit, the one we had under our control, and is not the one under control of Mr. Perman which he got from Nevada.

MR. MASON: Well, I don't think it has any materiality. We have offered a duly authenticated exemplified copy of proceedings in Nevada as evidence in behalf of the respondent.

MR. McKEON: Which is the one you did not procure from Nevada.

THE COURT: I will mark this myself—I will mark on it that it is the copy that came from your possession. This marking will be independent from the marking as an exhibit.

MR. MASON: Well, may it also appear it came from the files of the Probate Court too?

MR. McKEON: No.

THE COURT: In order that we may all know who made the markings, I will put my initials, T. H. S.

(MARKED EXHIBIT A—Nevada Court certificate and copies attached thereto)

(RECESS. HEARING RESUMED)

MR. PERMAN: May I resume with Mr. Coe, if Your Honor please?

THE COURT: Yes.

MARTIN V B. COE, resuming stand, testified further as follows:—

Q. BY MR. PERMAN: You are Martin V. B. Coe? A. Yes.

Q. You are the same Martin V. B. Coe that testified in this Court the past few days? A. Yes.

Q. Now you last testified with reference to the Tarbox Corporation in New York. Do you recall that? A. Yes.

Q. That was a corporation that was formed sometime in 1939?

A. Yes.

Q. At some time after that did you commence medical treatments in New York? A. Yes.

Q. What was the name of the Doctor that treated you?

A. Dr. Josephson.

Q. And about when was it that you commenced treatments in New York? A. April of 1940.

Q. When you first commenced treatments in New York, about how many treatments a week did you receive—about how many times a week did you receive such treatments? A. Three times a week.

Q. And what was that treatment for?

A. For the cleaning of the ears and all pertaining to the ears.

Q. At some time in 1940 did you lease an apartment in the city of New York? A. Yes.

Q. And that apartment was located where? A. 141 East 56th Street.

Q. And originally that lease was for how long? A. For one year.

Q. Did you later renew the lease on that apartment? A. Yes.

Q. And how long was that lease renewed for? A. For another year.

Q. The Tarbox Corporation was organized for what purpose?

A. For the buying and selling of securities.

Q. Is that the principal business that you are engaged in? A. Yes.

Q. And at the time you leased the apartment in New York in October of 1940, were you conducting most of your business in New York?

A. Yes.

Q. Between the time that you started medical treatment and October of 1940 did you return to Worcester? A. Yes, occasionally.

Q. And about how frequently was it that you returned to Worcester?

A. About once a week.

Q. And when you leased the apartment in New York on October of 1940 how often were you then receiving medical treatment?

A. Practically every day.

Q. Did you then on occasion return to Worcester? A. Yes.

Q. After October of 1940 how frequently would you return to Worcester? A. About once or twice every two weeks.

Q. And when you returned to Worcester on those occasions what was your purpose? A. To inspect the properties.

Q. You were then owning property on Boynton Street? A. Yes.

Q. Having in mind the separation proceedings that were started in January of 1941 by Katherine C. Coe, before that time when you returned to Worcester where did you stay? A. 2 Boynton Street.

MR. FUSARO: What was your answer, please? I didn't hear it.

WITNESS: 2 Boynton Street.

Q. And after Katherine C. Coe started the separation proceedings against you, when you came to Worcester where did you stay?

A. At 2 Boynton Street.

Q. During the period of time you were in New York did you have an automobile there for your use? A. Yes.

Q. And where was that automobile registered?

A. In the state of New York.

Q. Did you also have a car or cars in Worcester for your use?

A. Yes.

Q. And that car or cars were registered in what state?

A. Massachusetts.

Q. And that was a car or cars that you used in connection with your visits to Worcester? A. Yes.

Q. In about October of 1940 did you ask Katherine C. Coe to move to New York?

MR. FUSARO: I object; just a minute.

THE COURT: Excluded.

MR. PERMAN: Exception.

THE COURT: May I point out that she was then his wife?

MR. PERMAN: I think even so, Your Honor, the evidence is certainly admissible.

THE COURT: It might be if it was made in the presence of someone else and if you establish that.

MR. PERMAN: I'm not asking if it is a matter of conversation between husband and wife; I'm not asking for any particular conversation. I am merely asking whether or not there was a request made by Mr. Coe, the witness, to Katherine C. Coe to move to New York.

THE COURT: That is included in the restriction on the introduction of private conversation between husband and wife.

MR. McKEON: May it please the Court, I should like to observe it seems to me that it involves a matter that has been finally adjudicated.

THE COURT: On some phases of it, that would be so. On the question of whether or not she deserted him by not going, I think that has all been adjudicated, yes.

MR. PERMAN: Your Honor excludes the question?

THE COURT: Yes.

MR. PERMAN: Exception. The respondent offers to prove that such request was made and that Katherine C. Coe refused to move to New York.

THE COURT: You don't offer to prove that that was made in the presence of anyone else?

MR. PERMAN: No, Your Honor.

THE COURT: It is excluded.

MR. PERMAN: Exception.

Q. Did you before October of 1940 ask Katherine C. Coe to move to New York?

MR. FUSARO: I object.

THE COURT: Excluded.

MR. PERMAN: Exception. The respondent offers to prove that such requests were made prior to October of 1940 and that Katherine C. Coe refused to move to New York.

THE COURT: Is that all?

MR. PERMAN: That is all, Your Honor.

THE COURT: It is excluded.

MR. PERMAN: Exception.

Q. And while you were living in New York were you on an occasion summoned for jury duty? A. Yes.

Q. After October of 1940 did you intend to return to Massachusetts to live?

MR. FUSARO: Are you through?

MR. PERMAN: Yes, I am through with the question.

MR. FUSARO: I am objecting.

THE COURT: What is the objection?

MR. FUSARO: I think it would be important if we could find out when he formed that intention.

THE COURT: He said "prior."

MR. MASON: No, "after."

THE COURT: Oh, "after." I beg your pardon. After October of 1940. You mean immediately after? You don't mean any time between then and now? If you do, it is a little indefinite, unless you so state. I suppose you might have it "at any time," if you put it in that manner.

MR. PERMAN: I will put it in that manner.

Q. At any time after October of 1940 and up to the latter part of May 1942 did you intend to remove to Massachusetts to live?

MR. McKEON: I object.

WITNESS: No.

MR. McKEON: I object; wait a minute. I should like to have that restricted, if Your Honor please. It assumes something as to which there is no evidence whatsoever. It is a posterior question to the major question here, and for that reason it might be open to confusion.

THE COURT: It could be. If you wish me to instruct Mr. Perman that he must first establish that he intended to leave Massachusetts, I will do so.

MR. McKEON: It is done.

THE COURT: All right.

MR. PERMAN: Does Your Honor have in mind making some ruling?

THE COURT: Yes. Mr. McKeon objects, as I understand it, because your question pre-supposes that at some time he formed an intention to leave Massachusetts and go elsewhere and establish a residence, and that he had so established a residence or that there had been evidence that he had, and while there is some evidence of his living in New York he has at no time said that he intended to make New York his residence, unless I am mistaken.

MR. PERMAN: Well—

THE COURT: Does that state it?

MR. PERMAN: I think there is not only evidence to that effect but abundance of evidence to that effect, at least inferentially if not directly. So far as the actual precise test is concerned, I should like to submit that the U. S. Supreme Court has established so far as residence test is concerned that there be an absence of moving somewhere else, and I am trying to confine myself to the test established by judicial decision.

THE COURT: Well, you are asking for his intent now.

MR. PERMAN: That's right.

THE COURT: And I am going to permit it, but not exactly in that form at the present time. Unless you bring out what his intent was previous to that, or that he ever formed an intent to live somewhere else than in Massachusetts.

Q. In October of 1940 did you intend, Mr. Coe, to live in New York?

MR. McKEON: Subject to the same objection.

THE COURT: No, I will permit that.

Q. Did you hear the question? A. Yes.

THE COURT: Of course that is somewhat leading in form, but you put the witness on.

MR. McKEON: I don't object to it because of that.

THE COURT: All right, he may have it.

MR. PERMAN: My associate has suggested that this witness is one that has been put on by counsel for the—

THE COURT: Yes, I so ruled; oh yes. That he might ask him a leading question.

MR. MASON: I didn't understand that.

THE COURT: Yes. I said that question might be somewhat leading, but I said you put the witness on—meaning by that he could put it in leading form.

MR. MASON: That is all right. I'm sorry.

Q. In October 1940 did you intend to live in New York? A. Yes.

(HEARING SUSPENDED TO 10 A.M. FEB. 8, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FEBRUARY 17, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,
Commissioned Stenographer.

FEBRUARY 8, 1945 HEARING

MR. MCKEON: May it please the Court, there is still a confusion owing to our use of the convenient terms "petitioner" and "respondent," and since Mr. Perman has begun his examination I would like to invite counsel for Mr. Coe to agree that the evidence now being taken is not confined and limited to the plea in bar but is applicable to the same issues raised in his petition to vacate. They are one and the same issues involving the Nevada proceedings. We ought not to hear, I suggest, separately and independently on the plea in bar; insofar as it is applicable to the issues in Mr. Coe's petition that should be taken now. Do I make myself clear?

THE COURT: I'm not sure that I understand you.

MR. MCKEON: Mr. Coe has filed a petition, the legal effect of which, briefly, would be that since the marriage relation was dissolved in Nevada he is not the husband, and the effect of that there is to vacate the 1942 decrees here. And unless he establishes that, why his petition must be dismissed. The identical issues are raised on his petition as he has raised in this alleged plea in bar. Perhaps I can locate that petition.

THE COURT: Perhaps the Register could.

MR. MCKEON: That's it (indicating paper). (Court hands paper to Mr. Perman)

THE COURT: Well, it is your understanding that you are going forward on this, and it is your understanding that this is being tried?

MR. PERMAN: It is my understanding that that is one of the petitions involved. It is my understanding further—

THE COURT: Well, it is your understanding that this is one of the issues that we are trying here?

MR. PERMAN: Yes, Your Honor.

THE COURT: All right. Then do you understand further that all evidence having a bearing and relation to the plea in bar also is relevant to the petition to dismiss?

MR. PERMAN: I think that is right, Your Honor.

THE COURT: All right.

MR. PERMAN: That is not strictly speaking a motion to dismiss.

THE COURT: A petition to vacate.

MR. PERMAN: That is right, or modify.

THE COURT: I did describe it improperly.

MR. PERMAN: I think I can restate the position with reference to that motion. It is briefly this: That if the plea in bar is sustained it would require as a matter of law that that petition be allowed; that even if the plea in bar is not sustained the respondent has rights under that petition to have the Court modify the decree for separate support either by revoking it or materially reducing it.

MR. MCKEON: Or by materially increasing it.

MR. MASON: Not on this petition.

MR. PERMAN: No, hardly on my petition.

MR. MCKEON: Yes, on yours.

MR. PERMAN: Mr. Coe, will you come forward?

MARTIN V. B. COE, resuming stand, continued to testify as follows:—

Q. BY MR. PERMAN: You testified yesterday that by October of 1940 you were transacting most of your business in New York? A. Yes.

Q. By October of 1940 did you have most of your money in New York? A. Yes.

Q. Banks? A. Yes.

Q. Was there more than one bank? A. Yes.

Q. Did you at that time have an account at the Guaranty Bank & Trust Co. in Worcester? A. Yes.

Q. And what was the purpose of that bank account in Worcester?

A. To pay the local bills.

Q. Did you furnish the apartment in New York? A. Yes.

Q. Did you install a telephone in that New York apartment?

A. Yes.

Q. Now by January of 1941 were the relations between you and Katherine C. Coe strained? A. Very severely strained.

Q. And had they been strained for some time before? A. Yes.

MR. PERMAN: Have you those interrogatories?

MR. FUSARO: No sir.

MR. PERMAN: (to Sheriff) Will you see Mr. Donohue and get those interrogatories?

MR. MCKEON: They are in the record.

Q. Do you recall testifying with reference to certain interrogatories, answers to interrogatories that you signed in the separate support case?

A. Yes.

Q. I show you Question #10: "Do you intend to live with your wife again?" Do you recall that question? A. Yes.

Q. I show you your answer to Interrogatory #10: "I do not intend to live with my wife as long as she—

MR. FUSARO: Just a moment. Certainly you haven't any right to put in any interrogatories and answers that were filed and in behalf of this petitioner under the statute.

MR. PERMAN: I certainly have.

THE COURT: Will you tell me what makes you think you have?

MR. PERMAN: The entire issue, if Your Honor please, the intent, as I understood, and as Your Honor has already ruled, is open.

THE COURT: That is right.

MR. PERMAN: Any evidence that is material to the intent to establish a residence is material to the issue involved in the plea in bar.

THE COURT: That is right.

MR. PERMAN: And I offer the answers to that interrogatory as bearing on the residence intent.

THE COURT: Well, let it be understood for the purpose of the record that this is an interrogatory or these are interrogatories filed in another and previous case with a different issue involved. You do not dispute that?

MR. PERMAN: Well, I think it can be made more specific in that it is the case of Katherine C. Coe vs. Martin V. B. Coe in an action for separate support. It is between these same parties, in which action that decree was made, on which decree these proceedings are based. It is all part of the same picture, Your Honor. There may be a later petition, but the picture is a continuous one.

MR. FUSARO: Of course I would like to have it appear on the record that these interrogatories were filed not by the respondent Martin V. B. Coe, but by Katherine C. Coe against this respondent.

MR. PERMAN: I am willing to go even further, Your Honor, if I may continue and say that I am willing so that there will be no question as to the—

THE COURT: Just a minute. I don't think that that prevents him from using them, and as I think it over, considering this petition to vacate

that original decree, perhaps it does make it a part of the original case. When I started to make my ruling I didn't have that in mind. You may have it.

MR. FUSARO: If Your Honor please, may I call Your Honor's attention to the statute. You have that in mind; that interrogatories filed by the plaintiff shall only be used by the plaintiff and cannot be used by the defendant unless the plaintiff has opened up certain issues; and he is now using these interrogatories on the same issues I have opened up.

THE COURT: Get me Chapter 233, please. (To Sheriff)

MR. FUSARO: In order to expedite the matter, we will waive our objection in view of the fact that Your Honor has ruled, and you may proceed to introduce the answer he desires from the record.

THE COURT: Well, the Sheriff will be back in a minute. I am interested enough to look at it.

(Sheriff returns with volume requested by Court)

MR. FUSARO: They are right here; they are right in the files.

THE COURT: Do you know what section that is, Mr. McKeon?

MR. FUSARO: If Your Honor please, I think it is Section 65, 66 and 67.

THE COURT: That is Chapter 213, not 233 as I thought. You refer to Chapter 231?

MR. FUSARO: The interrogatories.

THE COURT: Yes. 65 refers to the answers by corporations; 66 is cost; 67, right to— Can you find it, Mr. McKeon?

MR. McKEON: Well, perhaps I can find it. Perhaps you can go on with the evidence, and when I find it I will call it to the attention of the Court.

MR. FUSARO: You may proceed.

THE COURT: Well, he seeks to introduce the interrogatories.

MR. FUSARO: If Your Honor please, I am withdrawing my objection in order to expedite matters.

THE COURT: All right.

Q. Did you, Mr. Coe, in answer to that question state: "I do not intend to live with my wife as long as she, (a) continues to prefer the society of other to myself; (b) continues to disregard all the factors that enter into a normal, stable marriage; (c) refuses to control a vicious temper; (d) continues to nag, scold, argue and make false accusations;

(e) continues to regard our marriage solely as a means of securing financial security to myself and her family, especially her insistence that the only reason she gave up her job as salesgirl at Denholm & McKay's and married me was to finally come into control of my estate if not by inheritance then by other means; (f) proceeds in the policy of having various members of her family follow me around." Correcting the answer to "e" instead of the word "myself" the word is "herself." Was that your answer on April 30, 1941? A. Yes.

Q. Was that—

MR. McKEON: May it please the Court, pardon me. I now ask that that be excluded from use on anything that was determined by the decree that Mrs. Coe was living apart for justifiable cause; that it be confined, if material at all, to issues arising since then. And may I suggest that the petition filed by Mr. Coe does not allege that the decree for justifiable cause was entered by fraud, accident or mistake, and that the sole grounds on which the Court is asked to act on his petition is the subsequent occurrence, if any, in Nevada.

THE COURT: It may be so confined.

MR. PERMAN: May I have that read again, Your Honor, the request that was made, so that I can determine what position I will take with reference to Your Honor's ruling?

THE COURT: Yes. (Stenographer reads aloud request)

MR. PERMAN: The respondent takes exception to that. Now I am going to make again, if Your Honor please, a very simple statement as to what I regard as being done here. The thing before the Court as I understand it is the plea in bar, and it seems that it is adding confusion when there is a discussion on the plea in bar, the petition to modify that I filed, the petition to modify that the petitioner has filed and those other matters. I had thought that we were going ahead on the issues raised.

THE COURT: I wonder if you understand Mr. McKeon and if you understand my decision. I understand that he asks that it be confined to the issues raised here now. There was already a decree of this Court that she was living apart for justifiable cause. That matter is res judicata. And this interrogatory and answer can be introduced here to attack that decree. Is that your position, Mr. McKeon?

MR. McKEON: It very probably is, Your Honor, although I was

examining the record and was not paying attention; I'm sorry.

MR. FUSARO: I am sure, Your Honor, that that is the situation.

THE COURT: (after looking at Chapter handed him by Mr. Fusaro) Well, it seems that once a part of them has been read—

MR. FUSARO: I beg pardon?

THE COURT: Provided it refers to the same subject matter. And of course many of the questions and answers you read refer to the domicile, and perhaps this has a bearing on domicile too.

MR. FUSARO: That's right. I understand it was limited just for that purpose.

THE COURT: Yes. That question and answer had a bearing upon domicile, so it is all right.

MR. PERMAN: We have offered, if Your Honor please, that interrogatory and answer as bearing on all the issues open here insofar as they may be material and relevant.

MR. FUSARO: No. If Your Honor please, when he offered that interrogatory and answer he specifically stated that he was doing it on the intention with respect to domicile, and I asked that the record be read. Your Honor allowed it in and I withdrew my objection on that theory. Now if he is going to change his position, if Your Honor please, I should like to know about it. May the record be perused, Your Honor?

THE COURT: I don't know that it will be necessary. I don't see what other bearing it has, for one thing; and since, as I remember it, you read the questions and answers on matters pertaining only to question of domicile, that is all that would be open to him.

MR. FUSARO: May I respectfully suggest, if Your Honor please, that when I offered the interrogatory, I did not offer the interrogatory. I called his attention to Interrogatory #5 and #9 and his answers, and they were allowed in to impeach his credibility, that at a different time and place he had made inconsistent and contradictory statement to what he has given now.

THE COURT: Yes, that is true, that is true.

MR. PERMAN: May I proceed?

THE COURT: All right.

Q. You remember being shown at some time stationery on which your name and 6 Boynton Street was printed?

MR. FUSARO: What exhibit is that, please, Mr. Perman?

MR. MASON: #5.

Q. I show you Exhibit 5, an envelope addressed to Mrs. Lucy Schneider. On the back is printed, "M.V.B. Gee, Worcester, Massachusetts" You see that, don't you? A. Yes.

Q. When was that stationery printed? A. I think around 1930.

(Mr. Perman hands exhibit to Court)

Q. Now you recall the hearing that was had in March of 1942?

A. Yes.

Q. Did you come in from New York for that hearing? A. Yes.

Q. Did you testify in Worcester? A. Yes.

Q. Were you affected in some way by that hearing? A. Yes.

Q. In what way were you affected?

MR. FUSARO: Now I object, Your Honor.

THE COURT: What is the purpose of that question? What do you seek to show?

MR. PERMAN: Intention, Your Honor, insofar as it may be material to the issues that are involved here.

THE COURT: Well, I don't see how it can, from the question.

MR. PERMAN: All right. The respondent offers to prove that as a result he was subject to asthmatic attack.

THE COURT: As a result of the hearing?

MR. PERMAN: That is right.

THE COURT: Well, unless my knowledge is sadly lacking, I don't see how he possibly could be.

MR. PERMAN: Well, I take exception to that remark, if Your Honor please. May I modify my offer of proof? The respondent will testify in any event that following the hearing he became subject to an asthmatic attack.

THE COURT: Oh, you may have that, of course.

Q. Following the hearing of March 1942, did you have an asthmatic attack? A. Yes.

Q. Have you been suffering from asthma for a period of time?

A. Yes.

Q. And when you were through with your testimony did you return to New York? A. Yes.

Q. Were you there treated for Asthma?

MR. FUSARO: Well now, if Your Honor please, how can that possibly be relevant to any of the issues in this case.

THE COURT: Why I suppose a person might change his place of residence because of asthma, if something was present in Worcester that caused allergy. As I understand, asthma results from allergy of some sort.

Q. Were you confined to your apartment for some time after you returned to New York? A. Yes.

Q. And did you have a nurse in attendance? A. Yes.

Q. And for how long did you have a nurse in attendance?

A. Five days.

Q. Sometime in April of 1942 did you see Katherine C. Coe in New York? A. Yes.

MR. MCKEON: Objection. Wait a moment.

THE COURT: I don't know what bearing—he may have it; I don't know what bearing it may have. April 1942?

MR. PERMAN: Yes, Your Honor.

Q. That was the middle of April? A. Yes.

Q. Where did you first see her in New York? A. At that time?

Q. Yes. Where? A. At the—outside of the apartment.

Q. What did Katherine Coe attempt to do at that time?

MR. FUSARO: I object to that.

THE COURT: What is the purpose of this? What do you seek to show now?

MR. PERMAN: Your Honor will specifically recall that it is claimed by the petitioner here that this respondent went to Nevada for the sole purpose of obtaining a divorce for a cause which arose here while both parties were domiciled here and for a cause which would not be recognized by the Courts of this Commonwealth.

THE COURT: Yes, go ahead.

MR. PERMAN: If that statute is applicable, the respondent intends to show that there was no such violation.

THE COURT: May I ask do you intend to show that he went to Nevada because of something that happened in New York?

MR. PERMAN: I intend to show, if Your Honor please, that he

intended to rely for ground in the divorce proceedings instituted in Nevada on something that arose in New York.

THE COURT: I think you may have it as tending to show—

MR. McKEON: May it please the Court, may I state that from the record which Mr. Perman has identified as an offer of proof and which for convenience we all have used for reference, it appears the causes which Mr. Coe alleged out there were two, one of which was desertion, and of course it was impossible in any event in April of 1942 he had any . . . so far as his alleged desertion. That was after the decree in which it was found she was living apart from him for justifiable cause. So I ask that any evidence taken along this line be restricted to his allegation of extreme cruelty and excluded from application to desertion, which could not possibly give him cause for this complaint.

THE COURT: How long a period of desertion was necessary in Nevada? Can you agree on that?

MR. PERMAN: May it please Your Honor, may I make an observation?

MR. McKEON: First may I—

THE COURT: You cannot both talk at once. I permitted Mr. Perman to go on.

MR. PERMAN: All this talk about res judicata so far as the proceedings in Nevada are concerned is wholly and entirely beside the point. A degree or a judgment becomes res judicata in an action when . . . In any action a defense of res judicata if applicable to a party may be set up; if it isn't set up it is waived. That is fundamental law. I had supposed it was so obvious I didn't think it was necessary to call Your Honor's attention to it. There is nothing in the Nevada records which indicate any plea of res judicata had been set up. Beyond that it doesn't make one bit of difference if Your Honor please, as to whether a valid existing cause of action was present. We are dealing solely with a matter of intent; intent, a frame of mind. I submit, if Your Honor please, whether or not it might have been res judicata in Nevada is wholly a theoretical proposition.

THE COURT: Why take all that time to argue all that when I have already ruled that you might show what his intent was?

MR. PERMAN: It has been referred to so many times I thought, per-

haps at this time I might clarify my position with reference to it.

Q. You will recall we were talking about sometime the middle of April 1942 when you saw Katherine Coe in front of your apartment?

A. Yes.

Q. Now I ask you at that time what did Katherine Coe try to do?

A. She attempted to—

MR. FUSARO: Just a minute. "Tried to do" is rather a hard thing. I object. I haven't any objection if he want to tell what she did do, but what he interpreted as her state of mind it seems to me is going pretty far.

Q. All right, what did she do?

A. She attempted to get into the apartment.

Q. Did you permit that? A. No.

Q. Did she say anything to you at that time?

MR. FUSARO: I object.

THE COURT: Excluded, unless there was someone present.

MR. PERMAN: Exception.

Q. Did she make any threat against you?

MR. FUSARO: I object; just a moment. It is his conclusion, if Your Honor please.

THE COURT: Ask him if she made a threat. It would of course be a conclusion, but on the other hand of course if she made a threat it would be admissible.

MR. FUSARO: Very well, Your Honor.

THE COURT: So we exclude the conversation. Now I suppose it would be difficult to get at it in any other way. I won't accept it as his conclusion any more than enough to call the witness's attention to it. Go ahead.

Q. Did Katherine C. Coe make any threat against you? A. Yes.

Q. Did you come to Worcester?

THE COURT: Now just a moment; unless you show what it was I will exclude that.

Q. What threat did she make against you?

A. She made the threat "If I see you with another woman I will kill you."

Q. After that did you come to Worcester? A. Yes.

Q. And about how many days after that New York incident?

A. The next two days.

Q. Within the next two days? A. Within the next two days.

Q. Did you see me at that time? A. Yes.

Q. Did you tell me at that time what had happened in New York?

MR. FUSARO: That I object to, Your Honor.

THE COURT: I think he may have it; more particularly because you asked him, if I remember correctly, if he went to Nevada on Mr. Perman's advice.

MR. FUSARO: Very well, Your Honor.

Q. Did you tell me what had happened in New York? A. Yes.

Q. In your talk with me at that time did you speak of going to Nevada? A. Yes.

Q. At that time did you speak of your purposes in going to Nevada?

A. Yes.

Q. Do you recall what you told me at that time? A. Yes.

Q. What did you tell me?

A. I told you that I wanted to get away from this part of the country, that I was going to Nevada; and I also talked with Dr. Josephson, who recommended that I go there because of my asthmatic attacks, and that I wanted to make it my home and to get away from her.

Q. And by "her" whom do mean? A. Katherine Coe.

Q. In the course of that talk did you refer to the tax laws of the state of Nevada? A. Yes.

Q. And had you learned something with respect to the tax laws of the state of Nevada? A. Yes, they were very liberal.

Q. Had you been in Nevada before? A. Yes.

Q. Do you remember about when that was?

A. I think it was in the year 1937.

Q. And who was with you on that occasion when you were in Nevada?

A. Katherine Coe.

MR. FUSARO: You mean your wife, sir?

MR. PERMAN: Wait a minute.

Q. Was that in the course of one of your trips out west? A. Yes.

Q. In the course of that talk with me did you request my advice with reference to obtaining a divorce, as long as you were going to be out in the state of Nevada? A. Yes.

Q. Did you get some advice from me? A. Yes.

Q. Do you recall being advised that you would have to live in Nevada indefinitely? A. Yes.

Q. Do you recall being advised that if divorce proceedings were instituted, to base them on the New York incident? A. Yes.

Q. Do you recall being advised that you should consult with some lawyer in Nevada to determine if that New York incident was sufficient grounds for divorce in Nevada? A. Yes.

Q. Did I make some recommendation as to a lawyer in Nevada?

A. Yes.

Q. And what lawyer did I recommend?

A. You recommended Senator Pat McCarron's office.

Q. At that time did I furnish you with a typed memorandum?

A. Yes.

Q. I show you this. Will you look at it?

A. (After looking at paper) That is a memorandum.

Q. Is that a copy of the memorandum that I gave you? A. Yes.

MR. McKEON: Just a moment. Is that the memorandum, or is that the copy?

MR. FUSARO: He said it is a copy.

Q. Did you take the original to Nevada? A. Yes.

Q. Did you intend to rely on the memorandum that I gave you and that you took to Nevada?

MR. McKEON: Wait a moment.

MR. FUSARO: I object.

THE COURT: Well, you see, Mr. Fusaro, you asked this witness about what he was advised by Mr. Perman, and if I remember rightly I think you asked him what the advice was.

MR. FUSARO: No, I did not; I'm sorry, Your Honor. May I respectfully call to Your Honor's attention that I made no inquiries into what advice was given by Mr. Perman, excepting that he had consulted Mr. Perman and had consulted the Nevada lawyer.

MR. PERMAN: That is not so, Your Honor.

MR. MASON: I don't think that is so.

MR. FUSARO: May I have record on it?

THE COURT: Yes.

MR. FUSARO: My recollection is I did not ask this witness what advice he got from Mr. Perman; I may be wrong.

THE COURT: Well, it is near enough to recess.

MR. MCKEON: Let me state this before recess: The difficulty with this matter is that at the proceedings in Nevada he did not rely on them and now is attempting to present evidence which would probably be appropriate had he actually relied on them in Nevada, so they would have some material bearing here. But actually he did not rely on them in Nevada. I would not too seriously object if it were restricted to his intention when he left here, but not have it apply to impossibility, proving that that was the cause stated in the record out there and was the cause that he actually relied on.

THE COURT: I don't think it goes anywhere near as far as that. I think the important thing is his intention in leaving here.

MR. MASON: And his purpose in going to Nevada.

THE COURT: Of course that is one and the same thing.

(Stenographer locates and reads aloud desired questions and answers from stenographic record of first day's hearing)

(Stenographer reads aloud last question on page 14 of this volume)

THE COURT: As showing his intent in leaving here, he may have that.

Q. Did you intend to rely on the memorandum I gave you that you took to Nevada? A. Yes.

MR. PERMAN: I offer the copy of the memorandum.

THE COURT: Well, what it is I don't think is so much material, but the fact that he intended to rely upon it is material. I don't think it makes much difference one way or the other what it was.

MR. PERMAN: I think it is extremely material, if Your Honor please.

MR. MCKEON: May I examine it? (Mr. Perman hands same to Mr. McKeon).

MR. MCKEON: I didn't mean to interrupt the course of the procedure, Your Honor. I don't mean to raise any question about it.

THE COURT: He has offered it.

MR. MCKEON: Well, I didn't realize he had offered it yet.

THE COURT: Yes.

MR. MCKEON: May it please the Court, after a hasty examination of the memorandum, we offer no objection to its admission for the limited purpose stated by Mr. Perman.

THE COURT: All right.

MR. MASON: What stated purpose do you refer to, Mr. McKeon?

MR. MCKEON: Intent of Mr. Coe at the time when he left home.

MR. FUSARO: That is all you offered it for.

MR. MASON: You better state the purpose so there will be no question about it.

MR. MCKEON: Mr. Perman will state only what we know. If this isn't an attempt to keep it a secret purpose we could avoid some objections here.

MR. PERMAN: Would Your Honor like me to make statement?

THE COURT: Yes, if you please.

MR. PERMAN: I don't know as I stated any specific purpose for which it is being offered.

THE COURT: Will you now state it?

MR. PERMAN: I will. I have no objection to the copy of this memorandum being used for the purpose of showing what the respondent intended to rely on in order to obtain advice in Nevada with reference to divorce proceedings.

MR. MASON: That it, you offer it for that purpose.

MR. PERMAN: Yes, I offer it in evidence, if Your Honor please.

MR. MCKEON: I still do not understand.

THE COURT: Well, I will limit it to evidence tending to show his intention in leaving here and going to Nevada.

MR. PERMAN: Is Your Honor enlarging or restricting the purpose for which I have offered it?

THE COURT: I don't know how you would interpret it. I intend to place that interpretation upon it only.

MR. PERMAN: May I have my statement re-read so it will be clarified in my mind?

THE COURT: Yes. (Stenographer reads aloud same)

MR. PERMAN: That is the purpose, if Your Honor please.

THE COURT: Is that the only purpose for which you seek to offer it?

MR. PERMAN: At this time, yes.

THE COURT: I will exclude it.

MR. PERMAN: Exception.

THE COURT: I offered to admit it to the extent of showing his intention in leaving here.

MR. MASON: We offer it for even a more limited purpose than that.

MR. PERMAN: I was restricting it so as to exclude any possible doubt. Instead of a general intention I have made it even more specific, as I thought, than Your Honor had.

(Messrs. Mason and Perman confer privately)

THE COURT: Go ahead.

MR. PERMAN: If Your Honor has no objection to a general intention—

MR. MASON: Pardon us for just a moment, if Your Honor please.

THE COURT: Do you mean, may I ask, that that tends to show his purpose in going to Nevada to seek advice?

MR. PERMAN: No, Your Honor. What I had intended to indicate was that there is herein set forth the basis upon which he intended to rely in obtaining advice in Nevada with reference to possible divorce proceedings. You will recall his testimony that I had advised him that it probably would be best if he consulted with Nevada attorneys to ascertain whether or not the grounds upon which he intended to rely were adequate under the Nevada laws as grounds for divorce.

THE COURT: Yes, I remember that.

MR. PERMAN: This supplements that.

MR. MCKEON: May it please the Court, if I understand that it is in substance what we have discussed—that it is an offer to show the intent of the witness at the time that he left here, to which we do not object.

MR. MASON: With reference to a specific purpose, with reference to a specific matter, the possibilities of the divorce proceedings being—

THE COURT: Well, that is clear and I will admit it on that basis. I didn't understand Mr. Perman at all. I understand that.

MR. PERMAN: I offer it, Your Honor.

THE COURT: On that basis?

MR. PERMAN: Yes, Your Honor.

THE COURT: I will admit it. (MARKED EXHIBIT B)

Q. You left for Nevada sometime the latter part of May 1942?

A. Yes.

Q. Before leaving for Nevada did you make arrangements so that you could transact your business in Nevada? A. Yes.

Q. With your brokerage house in New York? A. Yes.

Q. When you left, where did you leave from? A. From New York.

Q. Did someone go with you to Nevada? A. Yes.

Q. Who went with you to Nevada? A. Mrs. Allen and Miss Allen.

Q. By Miss Allen you mean Mrs. Coe #2? A. Mrs. Coe #2, correct.

Q. When did you arrive in Nevada? A. On June 10, 1942.

Q. And when did you go to the McCarron office? A. The very next day.

Q. That is, on June 11, 1942? A. Yes.

Q. Did you see Senator McCarron at that time? A. No.

Q. Did you talk with some lawyer in that office?

A. I was referred to Alan Bible, now the Attorney General.

Q. When you left New York for Nevada did you intend to return to New York? A. No.

Q. Did you then intend to live in Nevada indefinitely? A. Yes.

Q. Did you discuss your domestic troubles with Mr. Bible? A. Yes.

Q. Did you give to Mr. Bible the memorandum which I gave you?

A. Yes.

Q. Did you get some advice from Mr. Bible? A. Yes.

Q. Did Mr. Bible advise you that you would be required to live in Nevada indefinitely? A. Yes.

Q. Did you intend to follow that advice? A. Yes.

Q. Did you intend to live in Nevada indefinitely, whether you got a divorce or not? A. Yes.

Q. Did you state to Mr. Bible that you intended to rely on the New York incident? A. Yes.

Q. At some time later did you sign certain papers that were filed in the Nevada Court? A. Yes.

Q. Did those concern divorce proceedings against Katherine C. Coe?

A. Yes.

Q. Did you learn that those papers were filed on July 22 of 1942?

A. Yes.

Q. Between June 10 of 1942 and July 27 of 1942 were you at all times within the state of Nevada? A. Yes.

Q. Going back for a moment, how long did Mrs. Coe #2 and her mother stay in Nevada? A. She left the next day; two or three days later.

MR. FUSARO: May I inquire to whom he refers when he says "she," for the purpose of the record?

THE COURT: He said Mrs. Coe #2.

Q. That is two or three days after June the 10th? A. Yes.

MR. FUSARO: May I have that question and answer repeated? I'm not sure I got it. (Stenographer reads aloud same)

THE COURT: You mean whether the answer refers to Mrs. Coe #2 or her mother?

MR. FUSARO: That is right.

THE COURT: I see; in his answer. I thought you meant the question.

Q. Did Mrs. Coe #2 and her mother both leave at the same time?

A. Yes.

Q. Now at some time did you learn that Katherine C. Coe was in the state of Nevada? A. Yes.

Q. You got that information from Mr. Bible? A. Yes.

Q. At some time did you sign a property settlement contract? A. Yes.

Q. Did you receive a copy of that contract on which appeared the signature of Katherine C. Coe? A. Yes.

MR. PERMAN: For the purposes of the record, may it appear that the reference to Katherine C. Coe is reference to Katherine C. Coe who is the petitioner in these proceedings?

THE COURT: Yes, I don't think there would be any doubt about that.

MR. PERMAN: So as to be clear as to the identity of the parties.

Q. When you signed that property settlement contract was it your understanding that both parties were bound whether a divorce was granted or not?

MR. FUSARO: I object.

THE COURT: May I have that question read please. (Stenographer reads aloud same)

THE COURT: Well, he may have it, limited to his understanding alone.

MR. FUSARO: Very well, Your Honor.

THE COURT: Of course it wouldn't be proof of anything else. It wouldn't be proof that that was a fact, nor tend to show it in any way.

MR. PERMAN: Well, I withdraw the question, if Your Honor please. The contract, as I understand it, is in the record marked for identification.

MR. MASON: Well, it is in as Exhibit A.

Q. At some time did you appear in the District Court in Nevada in connection with the divorce proceedings brought against Katherine C. Coe?

A. Yes.

Q. You were represented by whom at that time? Who was your lawyer? A. Mr. Bible.

Q. Was Katherine C. Coe present in the Court Room at that time? A. Yes.

Q. Was she represented by counsel? A. Yes.

Q. Did you testify in that proceeding? A. Yes.

Q. Did Katherine C. Coe testify in that proceeding? A. Yes.

Q. While you were out in Nevada did you have an automobile out there? A. Yes.

Q. And that was registered under the laws of what state? A. Under the laws of Nevada.

Q. While you were in Nevada did you obtain an operator's license? A. Yes.

Q. And that was issued to you under the laws of what state? A. Under the laws of Nevada.

Q. While you were in Nevada did you open up a bank account out there? A. Yes.

Q. While you were in Nevada did you acquire a postoffice box? A. Yes.

Q. Where did you stay when you first arrived in Nevada? A. At the El Cortez Hotel in Reno.

Q. And you registered from what state? A. From New York.

Q. How long did you stay at the El Cortez Hotel? A. About one week.

Q. And where did you live after that? A. At the Del Monte Ranch.

Q. Is that in Wasso County, Nevada? A. Yes.

Q. Were you able to get home-cooked meals at the Del Monte Ranch? A. Yes.

Q. While you were at the Del Monte Ranch did you have a telephone installed? A. Yes.

Q. Between July 27, 1942, when the divorce papers were filed, and the date of hearing, were you outside of the state of Nevada? A. Yes.

Q. For how many days all told were you outside the state of Nevada? A. About 10 days.

Q. Where did you go during those ten days? A. First I went to Los Angeles.

Q. And whom did you go with? A. Dr. Josephson.

Q. And where did you meet Dr. Josephson to go to Los Angeles?

A. In Reno.

Q. How long did you stay in Los Angeles? A. About four days.

Q. And where did you go from there?

A. Went from there to Lake Tahoe.

Q. Is Lake Tahoe on the boundary line between California and Nevada? A. Yes.

Q. And on what side of Lake Tahoe did you stay?

A. On the California side.

Q. And what was the name of the place that you stayed at?

A. Camp Richardson, Lake Tahoe.

MR. FUSARO: Say that again, please.

WITNESS: Camp Richardson, Lake Tahoe.

Q. Were there people that you knew at Camp Richardson? A. Yes.

Q. On September 19, 1942, you knew that a divorce had been granted to Katherine C. Coe? A. Yes.

Q. And on that day did you marry the present Mrs. Coe #2? A. Yes.

Q. And you were married by Judge Guild? A. Yes.

Q. And that was the Judge that granted a divorce to Katherine C. Coe? A. Yes.

Q. After September 19th, 1942, did you leave Nevada for New York? A. Yes.

Q. How soon after September 19th, 1942?

A. Two or three days later.

Q. When you left Nevada for New York did you intend to return to Nevada? A. Yes.

Q. And what was your purpose in going to New York?

A. To give up the apartment.

Q. Was the lease soon to expire? A. Yes.

Q. When was that lease expiring? A. October 1st, 1942.

Q. What did you do in New York?

A. I gave up the lease and had the furniture removed, had the telephone taken out and the electric light disconnected.

Q. And how long were you in New York?

A. Until October 1st, 1942.

Q. Did you leave New York? A. Yes.

Q. And where did you go to from there? A. Worcester.

Q. What was your purpose in coming to Worcester?

A. To dispose of the property in Worcester.

Q. That is, the property on Boynton Street? A. Yes.

Q. Did you make an effort to sell the property? A. Yes.

Q. Were you then able to get the price you were asking?

A. On one of the properties, yes.

Q. What property was that? A. 6 Boynton Street.

Q. Did you rent one of the properties? A. Yes.

Q. Did you list, turn the properties over for sale to any real estate brokers? A. Yes.

Q. Sometime in 1943 did you go back to Nevada? A. Yes.

Q. Do you remember when it was that you left Worcester to go to Nevada? A. I think it was in June.

Q. Well, let me see if I can refresh your memory.

A. No, it was in May.

Q. In May; all right. And what part of May?

A. I think it was the middle of May.

Q. And about when was it that you arrived in Nevada?

A. I think it was the latter part of May, or the end of May.

Q. And what did you do when you got out there?

A. I was looking for some property out there, to purchase property.

Q. Did you see Mr. Bible in connection with the purchase of some property? A. Yes.

Q. Did Mr. Bible make some recommendations to you as to the purchase of some property? A. Yes.

MR. FUSARO: Now I think I object, if Your Honor please.

THE COURT: I think it is enough that he saw him. What recommendations he made I don't think are material. If he acted upon recommendations that were made, you may have it.

MR. PERMAN: I was going to lead up to that.

THE COURT: Ask him if he acted upon any recommendations he may have been given.

Q. Did you act upon any recommendations made to you by Mr. Bible concerning a property? A. Yes.

Q. Did you in fact negotiate with reference to the purchase of property? A. Yes.

Q. While you were negotiating with reference to the purchase of property did you then learn that Katherine C. Coe had started proceedings against you? A. Yes.

Q. What kind of property were you looking at in Nevada?

A. I looked at a ranch.

Q. And what ranch was that? A. At the Del Monte Ranch.

Q. Were you considering purchasing that property? A. Yes.

Q. And had a price been made to you? A. Yes.

Q. Had you made an offer? A. Yes.

Q. Had you looked at other property out there? A. Yes.

Q. What kind of property?

A. Some land, with the possibilities of putting a house on it.

Q. Where was that located? A. In Reno.

Q. Was there any other property? A. Yes.

Q. And where was that? A. Below Carson City.

Q. What kind of property was that? A. That was a large ranch.

Q. You learned at some time that Katherine Coe had brought suit against you? A. Yes.

Q. When you received that information what did you do?

A. I went to see Mr. Bible.

Q. Did you ask his advice with reference to the proceedings instituted here by Katherine C. Coe? A. Yes.

Q. What did Mr. Bible tell you?

MR. FUSARO: I object, if Your Honor please.

THE COURT: Well, I think that would be obtaining hearsay evidence that is not here material. We are not now inquiring what his intent was in going to Nevada or anything of that sort.

MR. PERMAN: I think it is all a part of the same thing, if Your Honor please.

THE COURT: I cannot see how it would be.

MR. PERMAN: Does Your Honor rule that that is inadmissible?

THE COURT: Yes.

MR. PERMAN: The respondent excepts. The respondent makes the following offer of proof: That he was advised by Mr. Bible that he ought

to return to defend those proceedings because in the opinion of Mr. Bible the divorce obtained by Katherine C. Coe on the 19th day of September, 1942, was a valid divorce. The respondent further offers proof to prove that he acted in reliance on that advice and returned to the Commonwealth of Massachusetts.

THE COURT: Well, I will rule that Mr. Bible's opinion of whether the divorce was or was not a valid divorce is immaterial.

MR. MASON: We are not offering it for that purpose.

MR. PERMAN: It is not being offered for the purpose of showing what Mr. Bible's advice was or that Your Honor accept it at this time as binding in any way; but to indicate what the purpose of the respondent was in leaving Nevada at that time and coming to Massachusetts.

MR. MCKEON: May I suggest, if Your Honor please, that it would seem the proper way to offer this evidence for the limited purpose stated by Mr. Perman as the result of some advice received from Mr. Bible would be to ask: Did you act upon it and come back to Worcester.

THE COURT: He may have that, of course.

Q. Did you receive some advice from Mr. Bible after you learned that proceedings had been commenced against you in Massachusetts by Katherine C. Coe? **A.** Yes.

Q. Did you act on the advice that you received from Mr. Bible?

A. Yes.

Q. And in acting on that advice given you by Mr. Bible what did you do? **A.** I returned back to Worcester, Massachusetts.

Q. Now when you came back to Worcester, Massachusetts, did you consult me? **A.** Yes.

Q. Did you ask for my advice concerning the proceedings that were—

THE COURT: Just a moment, Mr. Perman. If you wish to show that Mr. Bible—if you want to go one step further and show that Mr. Bible advised him to come to Massachusetts and because of that he came—if that was your purpose, you may have it. You went beyond that in your offer.

MR. PERMAN: I didn't intend to, Your Honor, if I did.

THE COURT: Well, I take it that you did. However, you may have that.

MR. PERMAN: I observe it is one o'clock.

MR. MASON: Why not finish that?

MR. FUSARO: Yes, why not finish that?

Q. What advice did Mr. Bible give you with reference to coming back to Massachusetts?

A. He advised me to come back to Massachusetts and fight the case.

MR. FUSARO: Now I take it that his previous exception ought to go out of the record—you waive it, is that right? So there won't be any confusion.

MR. MASON: I think we can waive that previous exception with respect to advice by Mr. Bible.

THE COURT: You do waive it; all right.

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION: (Continuation of testimony by Mr. Coe)

Q. Now when you came back to Worcester, did you see me? A. Yes.

Q. And I am talking about 1943 now. A. 1943?

Q. Yes, when you came back from Nevada. A. Yes.

Q. And at that time did you ask my advice concerning the proceedings brought by Katherine C. Coe? A. Yes.

Q. What was the advice that you consulted me about?

MR. FUSARO: Now I object, if Your Honor please.

THE COURT: He hasn't asked the witness, of course, what advice did I give you; I would exclude that; but he has asked what inquiry he made of Mr. Perman. He may have that.

Q. What inquiry did you make of me?

A. I asked if we were to fight the case.

Q. Was there anything else? A. No.

Q. To refresh your memory, did you inquire as to how long the litigation would take? A. Yes.

Q. And what did I tell you about that?

MR. FUSARO: Now just a moment, if Your Honor please.

THE COURT: I will exclude that.

MR. PERMAN: Exception. The respondent offers to prove that the advice he received at that time was that the extent of litigation was uncertain and may last for years.

MR. FUSARO: Well, in view of the offer of proof, I withdraw my objection.

THE COURT: All right.

MR. FUSARO: Now you may ask him, if you desire.

THE COURT: The objection is withdrawn.

Q. What was the advice I gave you with reference to the time it may take with reference to the litigation?

A. You told me it may take years and years.

Q. At some time 30 Forest Street was purchased by the Tarbox Realty Company? A. Yes.

Q. Was that property that you regarded as a good investment?

MR. McKEON: I object.

WITNESS: Yes.

MR. McKEON: Wait a minute; I withdraw it.

THE COURT: I was going to rule he might have it in any event.

Q. Are you living there now? A. Yes.

Q. When you came to Worcester from Nevada in 1943 did you then intend to return to Nevada? A. Yes.

Q. Have you had that intent since? A. Yes.

Q. I show you this check, Mr. Coe. Was that a check that you gave to Mr. Bible for payment to Katherine C. Coe? A. Yes.

Q. Did you deliver that to Mr. Bible before the divorce hearing?

A. Yes.

Q. Are you familiar with the signature of Katherine C. Coe?

A. Yes.

Q. Is that her signature? A. That is her signature.

MR. PERMAN: I offer it, if Your Honor please.

(MARKED EXHIBIT C)

MR. PERMAN: For the purposes of the record may it be noted that Exhibit C is a check numbered 541, drawn on the First National Bank of Nevada, dated at Reno, Nevada, September 18, 1942, in the sum of \$350.00 payable to Katherine C. Coe, signed Martin V. B. Coe, and that on the reverse side there appears in writing an endorsement "Katherine C. Coe."

Q. I show you this check, Mr. Coe. Was that a check you gave to Mr. Bible? A. Yes.

Q. For payment to Katherine C. Coe? A. Yes.

Q. I show you the writing on the check, "Katherine C. Coe." Is that the signature of Katherine C. Coe? A. Yes.

MR. PERMAN: I offer it, Your Honor.

THE COURT: It may be marked. (MARKED EXHIBIT D)

THE COURT: Did you treat those X's as a number?

WITNESS: Yes, I always do on those checks that have got no number.

MR. PERMAN: For the purposes of the record may I identify Exhibit

D?

THE COURT: Yes.

MR. PERMAN: As a check drawn on the Guaranty Trust Co. of New York, dated at New York, N. Y., September 18, 1942, payable to the order of Katherine C. Coe in the sum of \$4000, signed Martin V. B. Coe, and bearing an endorsement on the reverse side in writing, "Katherine C. Coe." Both exhibits C and D bearing cancellations and appear to be paid by the First National Bank of Nevada.

THE COURT: On what date? Are they both on the same date?

MR. PERMAN: I think that is September 10th.

MR. FUSARO: 9-21-42, the perforation, Your Honor; and the perforation on the other check is 9-25-42.

THE COURT: That is right.

Q. I show you this check, Mr. Coe. Was that one you delivered to Mr. Bible? A. Yes.

Q. And that is payable to whom? A. Withers and Edwards.

Q. Who are Withers & Edwards?

A. Those are the attorneys for Katherine Coe.

Q. And did you deliver this check to Mr. Bible for payment to Withers & Edwards? A. Yes.

MR. PERMAN: I offer it, Your Honor. (MARKED EXHIBIT E)

MR. PERMAN: For the purposes of the record, may I identify Exhibit E as a check numbered 542, drawn on the First National Bank of Nevada, dated at Reno, Nevada, September 18, 1942, to the order of Withers & Edwards, in the sum of \$1000, signed "Martin V. B. Coe," and bearing on the reverse an endorsement by stamp, "Withers & Edwards," and underneath in writing what appears to be "H. W. Edwards."

Q. Do you recall what that check for \$1000 was for? A. Yes.

Q. What was it for? A. For her attorney.

Q. Counsel fees? A. Counsel fees.

Q. And paid on the advice of whom? A. On the advice of Mr. Bible.

Q. Do you know the sign language, Mr. Coe? A. No.

Q. Have you ever conversed with Katherine C. Coe in the sign language? A. No.

Q. Have you ever conversed with Mrs. Coe #2 in the sign language? A. No.

MR. PERMAN: At this point, Your Honor, may I direct Your Honor's attention to the return of service on the citation issued in the contempt petition #131205, dated at Worcester, June 15, 1943, and reading as follows: "By virtue of this writ I this day summoned the within named respondent, Martin V. B. Coe, to appear at Court and show cause as within directed by giving in hand to Samuel Perman a true and attested copy of this contempt citation, as he is attorney and agent for the within named respondent." Signed "James L. Whittey, Deputy Sheriff."

MR. McKEON: I would like to have you put into the record that that citation refers to Mr. Coe as being Mr. Coe of Worcester.

MR. MASON: I don't think you will have a right to put anything in.

MR. McKEON: Well, I am noting it and asking you to agree to it.

MR. MASON: It speaks for itself.

MR. McKEON: It isn't offered.

THE COURT: You yourself may ask me about it.

MR. McKEON: That is just what I am doing and what I intend to do. Mr. Perman does not respond to my invitation.

MR. MASON: I don't understand that that was any citation that was prepared by the respondent.

MR. McKEON: Nobody claims that.

MR. MASON: For what purpose—

MR. McKEON: Well, we will let you know the purpose when the right time comes.

THE COURT: Mr. Mason, I think he has as much right to ask me to note that as Mr. Perman has to ask me note the citation.

MR. MASON: Any request could be made upon Your Honor, I assume; but I am just concerned about the materiality of the reference at the moment. And it is something that is called to the Court's attention and I think counsel was entitled to know for what purpose.

MR. McKEON: When Mr. Perman offers half an act I would like to introduce the whole act for the information of the Court.

MR. MASON: There is only one act and that was the act offered by the respondent, and that was that service of that citation,—

MR. McKEON: Which citation?

MR. MASON: Which the Court has, was not served upon Mr. Coe personally but upon his attorney, and that is the only reason it was offered.

THE COURT: If you ask me to note the service of the citation, then it is certainly proper for me to note what the citation is.

MR. MASON: Certainly.

THE COURT: I suppose that includes the whole citation.

MR. PERMAN: It is part of the record anyway. I wanted to call Your Honor's specific attention to that return of service.

THE COURT: And of course that makes everything on the citation worthy of note.

MR. PERMAN: Yes, I think—

MR. MASON: I don't know as it does or not. There is printing on there that might not be important.

MR. PERMAN: Because of course we are not bound by any allegations made by the petitioner.

MR. McKEON: We don't ask you to be bound by them.

MR. PERMAN: May I proceed, Your Honor?

THE COURT: Yes.

MR. McKEON: I wish you would—

THE COURT: Let's not have too many arguments.

MR. PERMAN: I direct Your Honor's attention to a special appearance filed by me on July 3, 1943 in the case of Katherine C. Coe vs. Martin V. B. Coe, in case 131205, being an instrument bearing the red ink number in the upper left hand corner "37," headed "Special appearance," and heading as follows: "Now comes Samuel Perman and says that service of the citation in the above entitled cause was made on him and that said service was improper and ineffectual." Signed "Samuel Perman." In the same case and bearing the same docket number, I direct Your Honor's attention to a motion to dismiss, bearing in red ink in the upper left hand corner the number "36," filed July 3, 1943, and reading as follows: "Motion to Dismiss. The respondent appearing specially says that service made upon Samuel Perman, his former counsel, did not confer jurisdiction upon this Court and moves that appearance be dismissed." Signed, "Samuel Perman." In the same case and bearing the same docket num-

ber, being marked in red ink #35 in the upper left hand corner, I direct Your Honor's attention to a special appearance filed July 3, 1943, reading as follows: "Now comes Samuel Perman and says that service of citation in the above entitled cause was made on him and that said service was improper and ineffectual." Signed "Samuel Perman." You may inquire.

MR. FUSARO: If Your Honor please, I desire to call the attention of the Court to the petition of the plaintiff in this, filed May 22, 1942, whereby the respondent, Martin V. B. Coe, is alleged to be of Worcester.

MR. McKEON: Pardon me, that is '43.

MR. FUSARO: I'm sorry, Your Honor. I was looking at the record here.

MR. MASON: May I ask for what purpose that is offered? I will object to it first and simply at the moment would like to know for what purpose it is being offered or noted.

MR. FUSARO: May I correct the statement I made it was filed May 22, 1942. It should be May 22, 1943. It is the very petition that was filed in this Court.

MR. MASON: Was that petition signed by Katherine C. Coe?

MR. FUSARO: This is the petition, if you would like to look at it. If you have got your own, I would like to look at it and point it out to you.

MR. MASON: If that is offered on any question of domicile of the respondent, I object to it.

THE COURT: I don't see how it could be evidence against the respondent as to domicile.

MR. FUSARO: Well, we are offering it to show that in the very petition itself the domicile of this man was alleged to be Worcester, and that the special appearances that Mr. Perman called Your Honor's attention to did not set up the fact that the Court had no jurisdiction by reason of the fact that this man was a citizen of Nevada. Now therefore service in the matter that was made was ineffectual, but he simply stated that he was his former counsel.

THE COURT: You may have it.

MR. FUSARO: I call Your Honor's attention to the decree of the Court—

MR. MASON: Just a moment, please.

MR. FUSARO: I am simply calling His Honor's attention to the decree of the Court.

MR. MASON: Just a moment. On the last request has there been any limitation of the purpose for this being noted?

MR. FUSARO: I am just calling Your Honor's attention to it.

MR. MASON: Isn't it really more a matter of argument, and is this really the time for an argument?

MR. FUSARO: In order that His Honor may have correct understanding of all the pleadings up to that point, I am calling this to His Honor's attention.

THE COURT: I accept it as such.

MR. FUSARO: I desire to call attention to the decree of dismissal dated October 21, 1943, wherein the Court described the respondent, Martin V. B. Coe, of Worcester.

MR. MASON: Now Your Honor, I will have to ask whether reference is now being made to matters which are before Your Honor of record.

THE COURT: You are asking what?

MR. MASON: Whether request is being made by counsel for the petitioner to note matters which are matters of record before Your Honor.

THE COURT: Well, I take it he has asked me to note it because Mr. Perman asked me to note certain things with reference to these very same petitions he is now speaking of. Is that it, Mr. Fusaro?

MR. FUSARO: Exactly.

MR. MASON: Well, there is no reference to any decree made by Mr. Perman, and now Mr. Fusaro is referring to some decree. I understood Your Honor to rule yesterday that any findings of a Judge in a prior hearing were not matters of record before Your Honor; specifically when Your Honor excluded the record, the very record we are now looking at.

THE COURT: Yes.

MR. FUSARO: Well, I'm not offering these matters in evidence as I understand it; I am merely calling Your Honor's attention to certain pleadings in the case and certain documents on file in the case.

MR. MASON: I object to any reference in this case or any noting at the request of the petitioner of any matters which are not matters of record before Your Honor in this case, and if they are to be noted and referred to they should be evidence in this case.

MR. FUSARO: May I withdraw the last one and present evidence now?

THE COURT: All right.

MR. FUSARO: I call Your Honor's attention to Exhibit 1, the divorce

libel of Martin V. B. Coe, filed in this Court on October 18, 1941, in which he describes himself of Worcester.

THE COURT: That is already in evidence.

MR. FUSARO: I call it to Your Honor's attention again.

THE COURT: May I see the date of it? (Libel handed to Court)

MR. FUSARO: I call Your Honor's attention to Exhibit #2, an amendment filed by Martin V. B. Coe on December 31, 1941.

MR. MASON: Do I understand Your Honor is now examining Exhibit 2?

THE COURT: Yes.

MR. MASON: Was there some specific reference made to Exhibit 2 that Mr. Fusaro asked you to—

THE COURT: I don't understand that there was.

Q. BY MR. FUSARO: Mr. Coe—

MR. MASON: Just a moment. May we have that last sentence of Mr. Fusaro requesting the Court to examine this Exhibit #2? May we have that, Your Honor? (Stenographer reads same aloud)

MR. FUSARO: If Your Honor please, I call Your Honor's attention to this document, it is numbered here 48, an appearance in behalf of this respondent by Mr. Perman. It is a general appearance.

MR. MASON: May I ask for what purpose that is being called to the Court's attention?

THE COURT: Yes, you may ask.

MR. FUSARO: For the same purpose that His Honor's attention was called to the so-called special appearance by Mr. Perman.

MR. MASON: Now I think it is clear, Your Honor, it seems to me that that matter is being noted to call Your Honor's attention to another citation, docket number 33.

MR. FUSARO: May I ask that I be permitted to finish?

THE COURT: Let's do it in order. If you have anything to call my attention to after Mr. Fusaro gets through, you may.

MR. MASON: My suggestion was he had called this matter to Your Honor's attention. If he has something further to say about that I will wait. But before we go on to something else I should like opportunity to call Your Honor's attention—

THE COURT: Why don't you wait? I will give you opportunity to, of course, but let's do it orderly.

MR. MASON: All right.

MR. FUSARO: If Your Honor please, I call Your Honor's attention to document numbered 33 in this case, another general appearance in behalf of the respondent by his Counsel, filed August 17, 1943; and also a general appearance in behalf of this respondent by counsel,—that, if Your Honor please, is case 9494.

MR. MASON: That is not in this case.

MR. FUSARO: Case 9494, that is in connection with plaintiff's Exhibit #1.

MR. MASON: Is that being offered in evidence?

MR. FUSARO: Yes, I will offer that in evidence. That is in evidence, 9494.

THE COURT: Well, I am at a loss to know why he appeared November 17, 1943 in that case.

MR. FUSARO: That was in connection with a petition for revocation that was filed and it may well be that it has a wrong number; but it has been docketed in that case.

THE COURT: It is styled Petition for Revocation of Decree, isn't it?

MR. FUSARO: That is right.

THE COURT: Then evidently it was filed in the wrong case.

MR. FUSARO: That is your signature? (Mr. Perman looks at same)

MR. MASON: I will object to any reference to matters which are not pleadings in this case, Your Honor.

MR. FUSARO: Well, there may be some question about this, and I will withdraw it. I now offer in evidence appearances in behalf of this respondent in case 9494.

MR. MASON: I object, Your Honor.

THE COURT: This may be—unless you wish to be heard on it?

MR. MASON: Yes. I object on the ground that the pleadings in another case are not evidence of evidential value in this case.

THE COURT: I think, Mr. Fusaro, the appearance is in the case and it is part of the case without being offered. I will note the fact.

MR. FUSARO: I withdraw offering it in evidence.

MR. MASON: The appearance in what case? In this case?

MR. FUSARO: It is in this case—there isn't any question of it, there are two of them right there in this particular case.

MR. MASON: You are referring to those documents which are filed under the number of this case which we are trying now?

MR. FUSARO: Yes.

Q. Now, so you did take—

MR. MASON: Wait. Is it proper for me at this time after Your Honor's attention is called by my brother, to call Your Honor's attention to another document that has—

THE COURT: Why don't you wait until he gets through with the witness. I will give you every opportunity to; and I will note that in my own notes.

MR. FUSARO: Well, I call Your Honor's attention to document 33, especially the return of the sheriff. That is in this case, Your Honor.

Q. So you did take Mrs. Coe #2 with you to Nevada, that's right isn't it? A. Yes.

Q. But yesterday when I asked you, you said you did not take Mrs. Coe #2 with you. Isn't that the fact? A. Well, at what time?

Q. You recall I asked you a question yesterday—I asked you the question, "Did you take Mrs. Coe to Nevada?" And you said "No," did you not? A. That's right.

Q. I see. Well, were you telling the fact yesterday, or not, when you made that answer? A. But that was a later date.

Q. I am asking you a question, sir.

THE COURT: There could be some confusion, not necessarily in the first question that you referred to, but now, because he has since testified that in 1937 he took Katharine C. Coe to Nevada.

MR. FUSARO: Very well, Your Honor.

MR. MASON: May I make a suggestion at this point?

THE COURT: What is your suggestion?

MR. MASON: That it would be very helpful to the witness if Mr. Fusaro would not raise his voice. I think it is much easier for the witness to hear a moderate tone rather than one of high pitch. I ask that as a simple courtesy to the witness.

THE COURT: If I remember correctly, yesterday you interposed an objection because Mr. Fusaro dropped his voice.

MR. MASON: No, the objection at that time was that he was talking sort of through the side of his mouth, without moving his lips.

MR. FUSARO: Well, that is not true and you know it.

MR. MASON: I make the request out of simple courtesy to the witness. Your Honor may be familiar with the fact that a moderate tone is easier for people that wear an instrument for the purpose of helping their hearing.

THE COURT: If there is a very loud tone close to the instrument it is disturbing to the ear. I don't know if you know that or not.

MR. FUSARO: No, I did not.

THE COURT: But I don't think that would be true at the distance you now stand; but if you get close to the witness and talk in a loud voice, it would bother the witness. Is that so?

WITNESS: That is so.

Q. If you have any difficulty in understanding my questions, you will let me know, will you? A. Yes.

Q. Now you recall yesterday I asked you when you went to Nevada in 1942 for your divorce if you took Mrs. Coe #2 with you, and you said you did not? A. That's right.

Q. Now were you stating the fact yesterday when you said that, or not? A. Yes..

Q. But it is a fact now you say that you did take Mrs. Coe #2 with you when you went to Nevada in 1942? A. At the previous one?

Q. I am asking you about '42 A. June 10?

Q. June 10, 1942, you did take Mrs. Coe #2 to Nevada with you?

A. With Mrs. Allen.

Q. I know, but you were there? A. Yes.

Q. When I asked you that question yesterday, why did you say "No"?

A. Because that was a different question.

Q. It was a different question, was it? A. Yes.

Q. And didn't I ask you several questions as to whether or not you had arranged for Mrs. Coe #2 to be in Nevada and you denied that was the fact? A. Yes.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. And didn't you say you had arranged with your counsel for Mrs. Coe #2 to come to Nevada? A. Yes.

Q. Now that is not true, it is? A. No, it isn't true.

Q. And you said yesterday, did you not, that the first time you saw

Mrs. Coe #2 was on July 18, 1942, at Lake Tahoe, California? That's what you said? A. I wish to correct that.

Q. That's what you said, is it not?

MR. MASON: Just a minute. This witness asked to be given opportunity—

MR. FUSARO: Wait until I finish my question.

THE COURT: Well, counsel on the same side of this case are asking me different things. Mr. McKeon is asking that his answer stand and you are asking that he give another answer.

MR. FUSARO: Well, whatever Your Honor decides. I submit to your Honor's judgment.

THE COURT: Well, I think when a witness says "I wish to correct that," in the first place I think that amounts to an admission that he did say that, and a present admission that it is not so and he wishes to make a different statement.

MR. FUSARO: Very well, Your Honor.

Q. You desire to change some testimony you gave yesterday?

MR. MASON: That isn't a fair statement. I object to this question, and I insist, respectfully, that the witness be given full opportunity to answer the question before another one is asked. He was in the process of answering the last question.

THE COURT: I think Mr. Fusaro is giving him exactly that.

MR. MASON: No, he is now putting words into the witness's mouth which did not appear, namely, if he wished to change; and he made no statement that he wished to change any testimony. I submit the witness should be given opportunity to answer fully the last question that was asked before another one is put to him.

MR. McKEON: I submit that that is the utmost trifling—

THE COURT: My interpretation of it was he said "I wish to correct that, "meaning" I wish to correct the statement I made yesterday."

MR. MASON: I don't know what he meant. He was in the process of adding something to that when he was cut off by Mr. Fusaro.

MR. FUSARO: May I suggest that counsel refrain from characterizing my conduct in the court room as unfair, and I submit he ought not to be permitted to do so. I have no objection to his objecting and submitting his objection to the Court. I think I am conducting myself in accordance with the rules, regardless of this—

THE COURT: Well, I would dislike to say to him that he could not call my attention to anything, and I would hesitate to make such a direction to him. Of course in the final analysis I will pass opinion on whether your conduct is unfair or not, or whether or not your conduct is proper. I think I will do it in each case.

MR. MASON: Now may I ask at this time that the witness be permitted to answer fully the last question that was asked?

THE COURT: I just said that I thought Mr. Fusaro was giving him exactly that opportunity when he said to him, you wish to correct that; and then I think he was beginning to ask him what correction he wished to make. I don't know how he may give him an opportunity any better than that.

MR. MASON: Well, he changed the question. What was the last question?

THE COURT: Was that in substance your question?

MR. FUSARO: Yes, Your Honor.

Q. What is your answer? A. What is the question?

Q. Do you desire to change any of your testimony that you gave yesterday?

MR. MASON: I object.

THE COURT: He may have it.

MR. MASON: My exception to the refusal of the Court to permit the witness to answer in his own way the prior question which was asked, which I say he was cut off from answering. This question now asked is a different question.

THE COURT: My recollection of it is he said, "I desire to correct that." Suppose we substitute this question; supposing we ask him what he desires to correct.

MR. MASON: I think that is a fair question to put to the witness.

THE COURT: All right.

Q. What do you desire to correct?

A. I made the statement yesterday that Miss Allen was at Lake Tahoe on July 27. My correct answer to that should have been August 27, a month later.

Q. Have you finished, sir? A. Yes.

Q. It is a fact, is it not, that you said it was July 18th, 1942 when you saw for the first time Mrs. Coe #2 at Lake Tahoe, California?

A. What's that question again, please?

(Stenographer reads aloud question)

WITNESS: I did not see her on that day.

Q. I ask you did say that? A. I said that in error.

Q. And didn't you further say that it was about the middle of June 1918 when Mrs. Coe #2 arrived at Lake Tahoe? A. What day?

MR. McKEON: 1942.

MR. FUSARO: Strike it out.

Q. As a matter of fact, you also said yesterday that it was June 15, 1942 when Mrs. Coe #2 first arrived at Lake Tahoe, California?

A. I did not.

Q. You did not? A. No sir.

Q. Did you say it was about the middle of June 1942 when Mrs. Coe #2 arrived at Lake Tahoe, California? A. No.

Q. And did you later on say that it was definitely—pardon me, I think I am in error about the month, July rather than in June, that it was about July 15, 1942 when Mrs. Coe #2 first arrived at Lake Tahoe, California?

A. That was in error.

Q. That was in error. And then didn't you say later on you remembered the exact date as being July 18, 1942 when you first saw Mrs. Coe #2 at Lake Tahoe, California? A. That was in error.

Q. Did you also make an error when you said that Mrs. Coe #2 was not in Nevada between June 10, 1942 and July 18, 1942?

A. She was not in Nevada.

Q. Was that an error? A. No.

Q. Well, she was in Nevada? A. She was not.

Q. Didn't you take her to Nevada? A. On June 10th, yes.

Q. Yes, and was it an error when you stated yesterday that you did not enter the state of Nevada with Mrs. Coe #2?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I am all confused.

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: He has confused me all up.

MR. McKEON: He has already testified that on June 10, 1942 he did arrive in the state of Nevada with Mrs. Coe #2 and her mother, Mrs. Allen.

THE COURT: That is right.

MR. PERMAN: I think there is a limit along precisely the same question being put, merely rephrasing it in different form.

THE COURT: That isn't the same question. I didn't hear Mr. Fusaro ask that question previously.

MR. PERMAN: The witness has already testified that he had, in the prior testimony, stated that Mrs. Coe was not in the state of Nevada around June 10 of 1942, that he desires to correct that and now says that around June 10 of 1942 she was in the state of Nevada. I think there is a reasonable limitation on examination along precisely the same lines.

THE COURT: I think that the limitation of cross examination are within the discretion of the Court, Mr. Perman, and I rule that Mr. Fusaro may ask him that question.

Q. What is your answer, sir?

A. What is your question again, please.

(Stenographer reads aloud question)

WITNESS: I stated in error that she was not in Nevada in July.

MR. FUSARO: May I have an answer to that question, Your Honor?

THE COURT: You may.

Q. Answer the question.

MR. FUSARO: And I ask that the answer that he gave be stricken from the record.

THE COURT: It may be.

Q. What is your answer, sir?

A. It is rather confusing, Mr. Fusaro, did you say this and did you say that.

MR. FUSARO: I ask that be stricken from the record, Your Honor.

MR. MASON: I ask to have it stand.

THE COURT: I will let it stand that he says he is confused. You may read him the same question again, exactly as given.

(Stenographer reads aloud question)

Q. Yes or no, sir.

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I am confused on that.

Q. What is there about that simple question that confuses you?

A. It isn't simple.

Q. Well, do you now realize what you said yesterday or not?

A. I realize there was an error when I said July 27.

Q. I didn't ask you that question. A. I wanted to correct that error.

Q. Just listen to the question again, please. (Stenographer reads aloud question) A. When? When I—

Q. You entered Nevada, you said yesterday, June 10, 1942, and I ask you now, sir, was it an error when you said yesterday that you did not enter Nevada with Mrs. Coe #2 on June 10, 1942?

A. On June 10th? I stated previously that I brought her on June 10 and not July—

Q. I didn't ask you that, sir. Were you in error yesterday when you said you did not bring Mrs. Coe #2 to Nevada with you on June 10, 1942?

A. I didn't say that yesterday, on June 10.

Q. You didn't say it? A. Not on June 10 yesterday; I said July—

Q. Pardon me. Don't you recall yesterday I asked you if you went to Nevada with Mrs. Coe #2 and you said "No"?

A. That's right, yesterday.

Q. And now you say you are in error?

A. As to the date of yesterday.

Q. You are in error? A. Yes.

Q. And you would like to change that, would you? A. Yes.

Q. Now what do you say about going to Nevada on June 10 with Mrs. Coe #2, and that is June 10, 1942? A. That's right, yes.

Q. And you left where with Mrs. Coe #2 so that you might go to Nevada and arrive there on June 10, 1942? A. What?

MR. PERMAN: Do you understand the question?

WITNESS: No, I don't understand the question.

Q. I would be glad to repeat it. Where was it that you and Mrs. Coe #2 started from for your journey to Nevada? A. From New York.

Q. From New York. What day was it that you started from New York with Mrs. Coe #2 for Nevada? A. May 31st, 1942.

Q. May 31 of 1942. Yesterday I asked you whether or not Mrs. Coe #2 was seen by you before you went to Nevada from New York and you said "No," you hadn't seen her.

MR. PERMAN: I pray Your Honor's judgment. I object to that.

THE COURT: Well, I can't remember that particularly.

MR. FUSARO: Let me ask another question.

Q. Did you say yesterday that when you left for Nevada that Mrs. Coe #2 was with her folks at Jacques Avenue in Worcester? Did you say that? A. No.

Q. You did not? A. No.

Q. If you said that were you stating the fact or not?

A. I was stating the fact as I knew it.

Q. When you said you left Mrs. Coe #2 at 8 Jacques Avenue, don't you remember?

MR. PERMAN: I pray Your Honor's judgment.

MR. MASON: That isn't very important.

THE COURT: You may ask him if he said that.

Q. Did you say yesterday that when you left for Nevada Mrs. Coe #2 was here in Worcester, and I asked where, and you said with her folks at 8 Jacques Avenue?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Separate your question.

Q. Did you say yesterday that you left Mrs. Coe #2 in Worcester when you left for Nevada?

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I don't know.

Q. Did you mention yesterday about your wife #2 being with her folks at 8 Jacques Avenue when you left for Nevada?

MR. PERMAN: I object.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I think I may have.

Q. Yes. Do you want to change that now, sir? A. No.

Q. You don't. Well, is it a fact that she was at 8 Jacques Avenue when you left for Nevada in June 1942?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. What is your answer? A. No.

Q. Where do— A. New York.

Q. Pardon me, I hadn't finished the question. Where do the folks of Mrs. Coe #2 live? A. 8 Jacques Avenue.

Q. In Worcester? A. Worcester.

Q. Well then if you say that you were not stating the fact when you said you left Mrs. Coe #2 at 8 Jacques Avenue when you went to Nevada June 19, 1942, what do you now say you would like to change?

MR. MASON: I object to that question.

THE COURT: You may have what do you now say you would like to say.

MR. FUSARO: Thank you.

WITNESS: I said she came out with me on June 10 to Reno, Nevada.

Q. For the purpose of getting a divorce so that you could marry her?

A. No.

MR. PERMAN: I pray Your Honor's judgment.

Q. But you did marry Mrs. Coe #2 the very day you got your divorce?

A. Yes.

Q. And didn't you intend all the time to marry Mrs. Coe #2 as soon as you got your divorce?

MR. PERMAN: I pray Your Honor's judgment. Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. Didn't you intend to marry Mrs. Coe #2 immediately upon getting your divorce, sir? A. No.

Q. But you did marry her immediately upon getting your divorce?

A. Yes.

Q. And you say that you had no intention to marry Mrs. Coe #2 before September 19, 1942?

A. Yes; wait a minute, I am confused on that point.

THE COURT: What are you confused on?

WITNESS: Well, he twists his words; he has a different meaning from what my answer should be.

THE COURT: In the last question?

WITNESS: Yes. Let him repeat the last question.

THE COURT: All right. (Stenographer reads aloud question)

WITNESS: That's right.

Q. When do you say you intended to marry Mrs. Coe #2?

MR. PERMAN: Wait. I object to that.

THE COURT: Read that, please. (Stenographer reads same aloud)

THE COURT: You mean when do you say you formed the intention?

Q. When do you say you formed the intention to marry Mrs. Coe #2.

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I had no intention.

Q. You understand my question, sir? A. Yes.

Q. You never intended to marry Mrs. Coe #2? A. No.

Q. Do you mean that? A. I mean that.

Q. But you did marry her? A. Yes.

Q. And that is what you took Mrs. Coe #2 to Nevada for, for the purpose of marrying her?

MR. PERMAN: Objection.

THE COURT: Well, you have the same question before, the self same question, and he answered "No."

MR. FUSARO: That is true, Your Honor.

THE COURT: Of course I suppose I might allow it a second time because he just said he never intended to marry Mrs. Coe #2.

MR. FUSARO: That's right.

Q. Well, do you want to think over that last answer a moment and tell me whether that is a fact or not? A. I said no.

Q. You had been keeping company with Mrs. Coe #2, had you, before September 19, 1942?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: What date do you say that was?

Q. September 19, 1942. Don't you recall your marriage date?

A. But that was after the divorce.

Q. The same day? A. Yes.

Q. How long had you been keeping company with Mrs. Coe #2?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor says you may answer.

A. I hadn't been keeping company with her.

Q. Prior to September 19, 1942 you had never kept company with Mrs. Coe #2? A. No.

Q. Yet you took her to Nevada where you were going to get a divorce?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I took her June 10, 1942, yes.

THE COURT: He may have the question and the answer.

Q. And now you say—

MR. MASON: Just a moment, Your Honor. Some of these things on record don't look as it appears in Court. There are two parts to the question. Now we have an answer that obviously is not responsive, and I now ask to have the question and answer stricken out and the question rephrased so there will be only one question at a time, so it won't be subject to any misinterpretation. If we have the question and answer read I think Your Honor will appreciate that.

(Stenographer reads question and answer)

MR. MASON: "Took her to Nevada where you were going to get a divorce." I don't know what the answer is to.

THE COURT: I think he could tell and I think he did tell, and I think he did answer it; and I think his answer was responsive.

MR. MASON: I take an exception to the ruling just made by Your Honor. You refuse to strike the question and answer out and refuse to require counsel to rephrase the question so that it would simply include one question at a time. I take exception to Your Honor's ruling.

THE COURT: He did answer it, and I said the answer may stand; unless this is a new question.

MR. FUSARO: This is a new question.

Q. You tell His Honor now why you took Mrs. Coe #2 with you to the state of Nevada June 10, 1942.

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Because her mother wanted to come on the trip.

Q. Anything more you want to say about that? You will have to answer; you cannot shake your head. A. No.

Q. So that the woman you were going to marry could be with you all this time?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: In the form of a question, he may have that.

MR. PERMAN: Exception.

Q. That is true, isn't it? A. No.

(HEARING SUSPENDED UNTIL 10 AM. FEB. 9, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FEBRUARY 23, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,

Commissioned Stenographer

FEBRUARY 9, 1945 HEARING

MARTIN V. B. COE, resuming stand, continued to testify as follows:—

Q. BY MR. FUSARO: Mr. Coe, why did you take Dawn Allen with you when you left for Nevada in 1942?

MR. PERMAN: Objection.

THE COURT: Well now, I have an answer to that question. He said "I took her to Nevada because I wanted her to come on the trip."

MR. FUSARO: Very well, Your Honor.

THE COURT: That's the last thing I had in my notes.

MR. MCKEON: Well—

THE COURT: I think he has answered. According to the record he has answered it more than once—that or a very similar question.

Q. Now Mr. Coe, how long was Dawn Allen in New York before you started on this trip to Nevada?

MR. PERMAN: Objection.

THE COURT: If he knows that he may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. For several days.

Q. How long prior to starting for Nevada was Dawn Allen in New York?

MR. PERMAN: Objection.

THE COURT: Couple of days, he said.

MR. FUSARO: Several days, I think, Your Honor.

Q. How long?

MR. PERMAN: Objection.

THE COURT: He may have it. The word "several" is rather indefinite.

MR. PERMAN: Exception.

Q. How long? A. I would say a couple of days.

Q. Where did you stay?

MR. PERMAN: Objection.

THE COURT: Where did she stay?

Q. Where did you and Dawn Allen stay while Dawn was in New York?

MR. PERMAN: Objection.

Q. For a couple of days before leaving for Nevada?

MR. PERMAN: Objection.

THE COURT: Well, I think that is objectionable, because it presupposes that they stayed together.

Q. Where did Dawn Allen stay?

MR. PERMAN: Objection.

THE COURT: If he knows he may answer.

MR. MASON: Exception.

Q. What is your answer, sir? A. I believe at the apartment.

Q. When was it following the hearing in March 1942 in this Court that you left Worcester for New York?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer.

A. I left immediately during the trial.

Q. You left after the trial, didn't you?

A. No, during the trial, after I testified during the trial there.

Q. You left for New York? A. Yes.

THE COURT: Will you make that a little bit clearer? I don't understand just what trial and when.

MR. FUSARO: Yes, Your Honor.

Q. The trial in this case started in March 1942, that's right isn't it?

A. What's that?

Q. The trial in this case started in March 1942?

MR. PERMAN: It is all a matter of record, if Your Honor please.

THE COURT: I asked him to bring this out because I don't know.

MR. MASON: We still don't know what case Mr. Fusaro is referring to.

THE COURT: That is what I asked him to bring out.

Q. Is it true, is it not, that the hearing on your libel for divorce and on the petition of Katherine C. Coe for separate support commenced on March 16, 1942? A. As far as I can remember.

Q. And it continued along until March 25, 1942? A. I believe so.

Q. And how long after that day, March 25, 1942, would you say it was that you went to New York?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: That was during the trial that I left for New York.

Q. Do you know when you left for New York?

A. I'm not sure, but I know it was during the trial.

Q. You have no specific date when you left Worcester for New York?

A. No.

Q. And how long after leaving Worcester for New York was it that you saw Dawn Allen?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor said you may answer. A. I'm not clear on that.

Q. You mean you don't understand my question, sir? Do you understand my question, sir? A. I'm not sure.

Q. Well, I will have it read for you. (Stenographer reads question)

A. I don't know.

Q. What is your best judgment, sir?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: My best judgment is I don't know.

Q. What is your best recollection? A. I don't know.

Q. Well, did you return to Worcester after arriving in New York and before proceeding to Nevada?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I think so.

Q. And when was it that you left Worcester determined on getting a divorce?

MR. PERMAN: Objection.

THE COURT: Will you read that? (Stenographer reads question)

MR. MASON: Certainly the form of the question seems to be objectionable.

THE COURT: I think I will exclude that.

Q. When did you leave Worcester with a view to getting a divorce?

MR. PERMAN: Objection.

THE COURT: I think I will exclude that.

Q. When did you leave Worcester, Mr. Coe, for the purpose of applying for a divorce.

MR. PERMAN: Objection.

THE COURT: I think I will exclude that.

Q. Didn't you have certain documents with you to take to Nevada so that you could apply for a divorce?

MR. PERMAN: Objection.

THE COURT: He may have that.

MR. PERMAN: Exception.

THE COURT: You introduced that yourself.

MR. PERMAN: Yes, Your Honor. I think the form of the question is one that embraces several questions.

THE COURT: Not that question.

Q. What is your answer?

MR. MASON: May I ask that the question be read to the witness, please?

THE COURT: Do you remember the question?

WITNESS: Not fully.

THE COURT: All right. (Stenographer reads question)

WITNESS: No.

Q. You had no documents when you left Worcester to take to Nevada in connection with proceedings you were contemplating, or rather in connection with proceedings you contemplated in Nevada? A. No.

Q. Didn't your counsel give you certain documents to take to Nevada?

A. Yes.

Q. Yes. And that was for the purpose of applying for the divorce, wasn't it?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: That was for the purpose of bringing them to Nevada to Mr. Bible.

Q. For the divorce?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: No.

Q. For what purpose? A. I don't know.

Q. Do you mean to tell His Honor that when you took this exhibit— may I have the exhibits, Your Honor? As I recall it, there were four or five pages in that exhibit.

MR. MCKEON: Has counsel an additional copy of that memorandum?

THE COURT: Well, it was introduced, as I remember it.

MR. MASON: Exhibit B.

THE COURT: It got into the file in the same manner that other exhibits got into the file.

MR. MASON: Is that last remark in the record?

THE COURT: Yes.

MR. MASON: I take exception to that.

THE COURT: All right, take it.

MR. MASON: Because I want to point out at this time that this Exhibit B was not filed in the papers of this case but introduced only as an exhibit, whereas Exhibit A had been on file as a document in the papers of this case.

THE COURT: Yes, but it got into the file.

MR. MASON: You said in the same manner as the previous exhibit.

Q. I show you Exhibit B. That is a copy of some document that was given to you by your Worcester counsel? A. Yes.

Q. And weren't you instructed to take that to a Nevada lawyer, having in mind your applying for a divorce? A. When I was—

Q. Answer my question. Do you understand my question?

MR. PERMAN: Well, he was answering:

Q. Well, all right; pardon me. Go ahead. A. No.

Q. Do you mean that? A. Yes.

Q. Why did you take a copy of Exhibit B with you?

A: Because Perman asked me to.

Q. And asked you to confer with Nevada counsel about getting a divorce?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: No.

Q. His Honor says you may answer. A. No.

Q. What instruction did you receive from Mr. Perman with respect to this document, Exhibit B?

A. He gave me, he told me to deliver this memorandum to Mr. Bible. That it was up to him.

THE COURT: Just a minute. I don't suppose, going back, that it is in the file has any part in the record. It may be stricken.

MR. PERMAN: I didn't hear Your Honor. May I have that?

THE COURT: Yes. I said my remarks about, it got in the file—that is no part of this case. It may be stricken.

MR. MASON: Well, may we have it stand in the record?

MR. McKEON: For what purpose?

THE COURT: Just a minute. You want it to stand in the record and you want an exception because I wouldn't strike it out. Now that I order it stricken, you want it to stand in the record—is that right?

MR. MASON: Well, I would assume that anything that happens in the Court Room and is on the record normally would stay there. But if Your Honor prefers to have that—

THE COURT: You asked to have it stricken from the record?

MR. MASON: I don't ask it be stricken from the record. I asked if it was in the record, and if so, I took exception to the statement.

THE COURT: Which is equivalent to asking that it be stricken.

MR. MASON: If Your Honor wishes to have it stricken, then I withdraw the exception. May I have just a moment?

THE COURT: Yes. (Mr. Mason confers with Mr. Perman)

MR. MASON: All right, Your Honor.

Q. You say that you had received instructions from Mr. Perman to take copy of Exhibit B with you to Alan Bible in Nevada, that right?

A. Yes.

Q. And was it Mr. Perman that had arranged a conference between you and Mr. Bible? A. He referred me to him.

Q. No. Did he arrange a conference between you and Mr. Bible?

MR. PERMAN: Objection.

WITNESS: I say he referred me to him.

Q. So that you knew that you had counsel in Nevada before you left?

A. I didn't know which counsel.

Q. But you knew you had counsel in Nevada before you left, because Mr. Perman told you?

MR. PERMAN: Wait a moment. I object.

THE COURT: The witness may answer.

MR. PERMAN: Exception.

WITNESS: I was instructed to deliver this to the office of Senator Pat McCarron, which I did.

Q. You stated a moment ago that Mr. Perman gave you that, a copy of Exhibit B, to take to Alan Bible, did you not? A. I said—

Q. Did you say it? A. I may have said that, yes.

Q. And were you stating the fact or not?

A. If he is connected with the office of Senator Pat McCarron.

Q. I am asking you to tell us were you stating the fact or not.

A. I was referred to the office of Mr. Bible.

Q. I didn't ask you that. I said when you said it were you stating the fact or not. A. What fact?

Q. That Mr. Perman referred you to Alan Bible. A. No.

Q. Now when you received a copy of Exhibit B what instruction did you get about taking it to Nevada?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: He gave me instructions to deliver it to the office of Senator Pat McCarron.

Q. And was it Mr. Perman, your local counsel, who had arranged for you to see Senator Pat McCarron? A. Yes.

Q. And when you left Worcester with a copy of Exhibit B, it was for the purpose of getting advice with respect to an action of divorce in Nevada? A. I don't know.

Q. You don't know? A. No.

Q. You knew why you were going to Nevada with a copy of Exhibit B to see Pat McCarron? A. Yes.

Q. And your Worcester lawyer told you, did he not?

A. He instructed me to send this to the officer.

Q. Now you say you knew you were going to Nevada to the office of Senator Pat McCarron with a copy of Exhibit B. You tell us why you were going there with a copy of this Exhibit.

A. To make Nevada my home.

Q. Not to get a divorce? A. No.

Q. When you saw Alan Bible you conferred with him about establishing a home in Nevada, did you? A. Yes.

Q. You didn't talk to him about any divorce?

A. I gave him this paper.

Q. No. Did you talk to Mr. Bible about a divorce? A. No.

Q. You say you gave Mr. Alan Bible no information about a divorce?

A. None other than that.

Q. Pardon me. (Stenographer reads question aloud)

A. None other than this.

Q. All you gave him was a copy of Exhibit B, is that right?

A. Yes sir.

Q. Are you sure of that, sir? A. Yes.

Q. Outside of giving him a copy of Exhibit B you gave your lawyer in Nevada no other information?

A. Not other than contained in this.

Q. You said all you gave him was a copy of Exhibit B? A. Yes.

Q. And that's all you gave him? A. Yes.

A. And that's the conference you had with him? A. Yes.

Q. Now when you went to the offices of Pat McCarron in Nevada did you tell them out there in Nevada that you had been referred by Mr. Perman? A. Yes.

Q. And he said, "We know all about that, Mr. Coe"? You shake your head. You mean "Yes," is that right? A. What's the question?

Q. You shook your head, meaning "Yes"?

A. I want to know what you meant by that.

Q. What do you—

A. I want to know what you meant by your question.

Q. Didn't you shake your head in the affirmative, in this way (indicating)? A. No.

Q. You didn't. I see. When you told them in Nevada in the offices of Senator McCarron—

THE COURT: Do you want to wait a moment? It is hard for me to hear with that pow going outside (referring to motor truck with plow attached). Does that prevent you from hearing?

WITNESS: No. There was a noise, I didn't know just what it was.

THE COURT: It may not bother you as much as it does us.

WITNESS: That's right.

Q. Now that isn't going to interfere with you, Mr. Coe?

THE COURT: I don't think it bothers him as much as us.

Q. Now when you arrived at the offices of Senator Pat McCarron they said they expected you because your counsel, Mr. Perman, had written about it? A. Yes.

Q. Now Mr. Coe, you were told by your counsel in Nevada that you would have to live in Nevada six weeks before you could apply for a divorce? A. I was told I would have to live there indefinitely.

Q. Will you answer my question? Were you told that you would have to live there six weeks before you could apply for a divorce?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I think that he has tried to answer it when he said "I was told I would have to live there indefinitely." It isn't exactly a yes-or no answer, but—

MR. FUSARO: Very well.

Q. Did you state previously that you were advised that you would have to stay there six weeks before you could apply for a divorce? Did you? A. Yes.

Q. And, now do you want to change that too, Mr. Coe?

A. Change what?

Q. And say that the advice that you were given was that you would have to stay there indefinitely before you could apply for a divorce?

MR. PERMAN: Objection.

THE COURT: Leave out the word "too."

MR. PERMAN: Exception.

MR. FUSARO: May I have it read without the "too"?

(Stenographer reads aloud question, omitting "too.")

Q. Do you want to change that?

MR. PERMAN: Objection.

THE COURT: Will you read that?

MR. FUSARO: May I suggest that she read back two or three questions where I stated you were advised you would have to stay there six weeks, and he said "Yes," and now my next question: "Now you want to change that too?"

THE COURT: That is what I had in mind. That is what I thought was the question.

MR. FUSARO: That's right.

THE COURT: And that is what I meant when I said "If you leave out the word 'too' you may have it." I referred to that question rather than the later question which was read.

MR. PERMAN: Subject to my exception, of course.

Q. Do you want to change that statement that you made with respect to being advised that you would have to live in Nevada six weeks before you could apply for a divorce?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: What is there to change?

Q. Don't ask me questions. Just answer mine, please.

A. I don't know.

THE COURT: Well, I will make it clear to you. As I understand it, you said just a few moments ago that you were advised that you would have to remain in Nevada indefinitely.

WITNESS: Yes.

THE COURT: If you sought a divorce there in Nevada. Now Mr. Fusaro asked you didn't you say previously that you were advised that you would have to remain there six weeks. Now I understood you to say "Yes," to that question. Then he asked you "Do you want to change that?"

WITNESS: No.

THE COURT: Have I stated it?

MR. FUSARO: Correctly, yes Your Honor.

MR. PERMAN: May it please Your Honor—

MR. FUSARO: Just a moment.

MR. PERMAN: May I be heard?

THE COURT: Yes.

MR. PERMAN: If my memory serves me right the precise question asked by Mr. Fusaro was whether or not this witness was advised by Nevada counsel as to whether or not he would have to remain in Nevada six weeks before instituting divorce proceedings. I think that was different than the question that was put by Your Honor to the witness. I think as Your Honor has stated it, it was whether he was advised he would have to remain in Nevada for six weeks. If there is any doubt I suggest that the record with reference to that question be read to Your Honor. I should like to submit further that the question of Mr. Fusaro pre-supposes that the testimony of the witness is he was advised to remain in Nevada for six weeks before instituting proceedings for divorce, and the testimony of the witness that he was advised to remain indefinitely was necessarily a change. I respectfully submit that the advice of both those matters is no necessarily a change in testimony; they could both be given without constituting a change or discrepancy in testimony.

THE COURT: Well, it is true, Mr. Fusaro, that he could make both statements and that there wouldn't be any inconsistency, because he might be advised that he would have to be in Nevada six weeks before he could start divorce proceedings and then he might also be advised that he would have to live in Nevada after the divorce if he remarried. Now I don't know just what the witness intended.

MR. FUSARO: Very well, Your Honor.

THE COURT: So he could have received advice as to those two different phases of the question. Is that what you mean, Mr. Perman?

MR. PERMAN: I think Your Honor is right except with reference to staying in Nevada indefinitely after the divorce. I don't think that is precisely the testimony. The testimony was, advice given at the time of conference that he would be required to live in Nevada indefinitely. That is, I don't think that there is anything this witness said that required an interpretation of that advice to be so construed as to be an indefinite living there after the divorce was obtained.

MR. FUSARO: I submit it appears to be an argument, but in view of what Your Honor has suggested, may I proceed with my question?

THE COURT: Yes.

Q. When you arrived in Nevada and you gave your counsel in Nevada a copy of Exhibit B— **A.** Yes.

Q. Did you discuss divorce proceedings? **A.** I gave him this.

Q. Will you answer my question? Did you talk about divorce proceedings? A. Yes.

Q. Yes. Did your counsel advise you at that time that it would be necessary to live in Nevada for six weeks before you could apply for a divorce, or did he say that it would be necessary for you to live indefinitely in Nevada before you could apply for a divorce?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: He told me indefinitely.

Q. Now you understand the question pretty well, don't you? A. Yes.

Q. Well, did you ask your counsel when he told you that you would have to live in Nevada indefinitely before you could apply for a divorce how long that indefinite period might be, so that you could start divorce proceedings?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I don't see, Mr. Fusaro, how an indefinite period could then be a definite period. Is that your objection?

MR. PERMAN: Yes, Your Honor.

MR. FUSARO: Probably my question isn't a good question.

Q. Well, didn't you ask your counsel at that time how long you would have to wait before you could even apply for a divorce? A. Yes.

Q. Yes. Did your counsel tell you? A. Nevada counsel?

Q. Yes, I am talking about your Nevada counsel. A. Yes.

Q. And he told you that it would be six weeks, did he not?

A. Six weeks or more.

Q. Well, when you filed your complaint for divorce in Nevada you filed it so that you could be free to marry? A. No.

MR. PERMAN: Well, I pray Your Honor's judgment.

THE COURT: I am afraid I don't know enough about the law in Nevada to rule on that question. Is there a distinction?

MR. FUSARO: Well, of course in Nevada the law, as I understand it—we are going to have the statute of Nevada. As I understand the law of Nevada, immediately upon entry of the decree that makes him free to marry.

THE COURT: Yes, but is there any other type of divorce? You see at one time in this Commonwealth we had two types of divorce, and we now have only one.

MR. FUSARO: Only one, I think; is that right Mr. McKeon?

MR. MCKEON: I wouldn't undertake to answer that. In thinking it over, my own thought is it makes no difference whether there are other kinds of divorce in Nevada.

THE COURT: Oh, I think it does.

MR. MCKEON: On intent. I would like to have Mr. Mason assume for once that I know how to object if I desire to.

THE COURT: I assume you are arguing that the question is admissible?

MR. MCKEON: That's right.

MR. FUSARO: Your Honor has ruled that the question is inadmissible?

THE COURT: This is the way it seems to me, Mr. Fusaro. I think it is admitted he filed for divorce; in fact that is part of the case of the respondent, and if there is only one type of divorce, one kind of divorce in Nevada, then it would seem to me that it made no difference. You see, in some states there are two kinds of divorce, as there was once in this Commonwealth.

MR. FUSARO: Then I will be glad to withdraw that one.

Q. I ask you this question, Mr. Coe. You filed your divorce libel in Massachusetts so that you could be free at sometime to marry Dawn Allen?

MR. PERMAN: I pray Your Honor's judgment.

MR. MASON: If Your Honor please, I assume that the line of inquiry now is permitted by Your Honor on the question of the plea in bar, and I further understand that this line of inquiry is permitted to attack the validity of the Nevada divorce in connection with the evidence on the plea in bar. I therefore ask Your Honor to exclude any testimony or any questions that have no materiality or bearing on that issue at the moment.

THE COURT: It would only be admissible on showing his intent in going to Nevada.

MR. FUSARO: That is what I offer it for.

THE COURT: And I suppose if his intent was to secure a divorce for a certain purpose that it might be material how long he entertained that particular purpose or intent.

MR. MASON: Well, I don't agree that that is necessarily a proper statement of the law, Your Honor; but directing your attention to the

last question, that had reference to some filing of a libel for divorce in Massachusetts.

THE COURT: Yes, I remember that it did.

MR. MASON: Of course the respondent's petition is this: That if the line of inquiry is directed to the matter of domicile of Mr. Coe in Nevada, we have consistently taken the position that that is res judicata in view of the respondent's Exhibit A. However, I understand Your Honor is permitting the petitioner to go forward to inquire into the matter of domicile over our objection and exception.

THE COURT: Well, wasn't that the decision of the Supreme Court?

MR. MASON: I'm not sure that it was, Your Honor. I think that the decision of the Supreme Court was that the petitioner was entitled to go forward with evidence that might attack the validity of the Nevada decree.

THE COURT: Well, isn't that what I asked you?

MR. MASON: I don't agree that the Supreme Judicial Court has taken the position or indicated that in a case where the evidence under the plea in bar shows that both parties were before the Court and both testified, and where the issue of domicile was one of the issues in the case and submitted to the Court and decided by the Court, as I say, with both parties before the Court, both testifying before the Court with respect to the issue of domicile, anything was then open with reference to attacking the validity of the decree. It may be that for other reasons the Nevada decree might be said to be invalid, but certainly not on that ground on the testimony already submitted in that case in this bearing.

THE COURT: Well, it seems to me that I have ruled on that question throughout the course of this hearing many, many times.

MR. MASON: I think that is correct, Your Honor; and so I stated originally that notwithstanding the respondent's position the question of domicile is not open. Your Honor has ruled that it was, and has permitted testimony on that issue. However, at this time I simply request, in view of Your Honor's ruling, that any testimony now be confined to the issue of domicile or to any issue involved in attacking the validity of the Nevada decree.

THE COURT: I think I have read this paragraph before, "In the case at bar (etc., reading aloud paragraph).

MR. MASON: I take it that the Supreme Court directed in its rescript that the petitioner was entitled to introduce any competent evidence that might attack the validity of the Nevada decree. I am asking at this time, if Your Honor please, that any evidence be confined on the respondent's plea in bar to any such issue that Your Honor rules the petitioner can properly raise at this time. So I think some of the questions that are being go beyond the issues involved in the respondent's plea in bar. I don't see how Mr. Coe's intent with reference to marrying Miss Allen had anything to do with the issue.

THE COURT: If his purpose in seeking a divorce in Massachusetts was so that he could marry, I will call her Mrs. Coe #2, and if failing to secure the divorce in Massachusetts for that purpose, and if he continued to have that purpose in mind and left this Commonwealth to go into another state and there to seek a divorce for something that occurred in this Commonwealth or for a cause that occurred in this Commonwealth, and he still had in his mind that same purpose to secure a divorce to marry Mrs. Coe #2, and if that was a part of his intent or cause, that fact continuing from the time that he first sought a divorce in this Commonwealth and continuing when he went to Nevada or any other state, it would be part and parcel of his whole intent in seeking a divorce, and the fact would be important in determining what his purpose was when he left this Commonwealth to go to Nevada.

MR. MASON: The respondent excepts to that ruling with reference to the admissibility of that evidence.

(RECESS. HEARING RESUMED)

MR. FUSARO: Your Honor has ruled I may have the last question?

THE COURT: Yes.

Q. What is your answer?

THE COURT: He might not remember the question. (Stenographer reads aloud question)

MR. PERMAN: Objection.

MR. FUSARO: The Court, as I understand, has already passed on it.

MR. PERMAN: Exception.

MR. MASON: The Court has allowed that question, as I understand?

THE COURT: Yes.

MR. MASON: You will note our exception.

Q. What is your answer? A. No.

Q. Then you filed your divorce libel in Nevada so that you might be free to marry? A. No.

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

MR. MASON: "I wish you would give us an opportunity to enter our objection and exceptions before you continue with the next question.

THE COURT: Wouldn't it be shorter if we just took it for granted; you are taking objection and exception to every question that is asked.

MR. MASON: I don't think that is quite an accurate statement as to our state of mind, Your Honor; and I would like to state at this time that we are taking exception to such matters as we think we have a right to except to in the interests of our client. Now I don't think anything can be taken for granted in the way of exceptions.

THE COURT: No, I don't suppose it can be.

MR. MASON: Is it clear now that there is an objection and exception to the last question asked by my brother?

STENOGRAPHER: Yes.

Q. Mr. Coe, how long did Dawn Allen remain in Nevada after your arrival there June 10, 1942? A. A couple of days.

Q. Where did she go after a couple of days? A. She returned.

Q. Returned where? A. To Worcester.

Q. I see. And when did you next see Dawn Allen?

MR. PERMAN: Objection.

THE COURT: Does he mean after he married her?

MR. FUSARO: No, Your Honor. As I understand his testimony now, a couple of days after June 10th Dawn Allen wife #2, left Nevada and came back to Worcester.

Q. That's what you said, isn't it? A. Yes.

THE COURT: Oh, I didn't understand that. I lost track of the date. I heard him say that she returned to Worcester, but I did not know that it was a couple of days after June 10th. Is that right?

WITNESS: Yes.

Q. When did you next see Mrs. Coe #2?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer.

A. The latter part of August.

Q. And where did you see her?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Lake Tahoe.

Q. Lake Tahoe, California? (Witness nods head in affirmative)

Q. You must not shake your head.

THE COURT: What did he say? (Stenographer reads question)

Q. 1942? A. Yes.

Q. And did you send for her at that time so that you could marry her, in 1942?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: That was after the divorce.

Q. Did you send for Mrs. Coe #2 so that she came down in August at Lake Tahoe? A. Yes.

Q. And you sent for her at that time so that you could marry her?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: No.

Q. And you did marry her?

MR. PERMAN: Objection. Among other things, if Your Honor please, this was all gone over yesterday, among other objections to it.

THE COURT: Is that now your objection?

MR. PERMAN: That is one of the objections, Your Honor.

THE COURT: Well, in view of the testimony of this witness, he may have it.

MR. PERMAN: Exception.

Q. That's right, isn't it? A. No.

Q. You understand the question? A. I do.

Q. You did marry her, didn't you? A. Yes.

Q. Will you look at these Exhibits E, C, and D. Look at them, please.

No, just the reverse side. I am going to call your attention to these stamps here (indicating), 1, 2 and 3. A. What do you expect me to do?

Q. Well, what are those stamps?

MR. PERMAN: I pray Your Honor's judgment.

Q. What are those stamps, September 10 on there?

A. Well I suppose that—

MR. PERMAN: Wait a moment. I object to that.

THE COURT: If he did not put them on, Mr. Fusaro, I don't know how he would know.

MR. FUSARO: Yes, Your Honor.

THE COURT: You may ask him if he knows.

Q. Do you know what those stamps are on the reverse side of each of those exhibits, with respect— A. No.

Q. To the Nevada Bank stamp on September 10th, 1942? A. No.

THE COURT: Do you know what he means? This date here (indicating), September 10, 1942.

WITNESS: September 10, 1942; I don't know what the rest of it is.

THE COURT: It looks like 0001.

WITNESS: I wouldn't know what that meant.

THE COURT: And I show you then Exhibit E, and this is Exhibit C, and the same thing appears here. It is evidently in the same ink as the ink of the First National Bank of Nevada, and it appears, above it on each one, although it is a little indistinct on the sides. Well, you have asked him if he knew what it was and he said "No."

Q. Did you have the First National Bank of Nevada place those stamps on the reverse side of these exhibits C, D and E before delivering them to your counsel, Alan Bible?

MR. PERMAN: I object.

THE COURT: He may have it.

WITNESS: No.

Q. Did you go to the First National Bank of Nevada on September 10, 1942 and request your bank to guarantee payment of those checks?

MR. PERMAN: I object.

Q. Exhibits B, C and D—pardon me, C, D and E.

THE COURT: Well, it might show whether or not it was in the nature of a certified check. I don't know that it does, but if that is the purpose he may have it.

MR. FUSARO: Well, if Your Honor please, an inspection of these exhibits shows the date when he claims when they were delivered.

THE COURT: September 18.

MR. FUSARO: That's the testimony yesterday and that is the face of these exhibits. How that bank stamped it on there, Your Honor, I think may be very relevant to the issues.

THE COURT: Well, I think it may be very relevant too, if this witness knows, if it is within his knowledge.

Q. Do you say that before these checks were delivered to your counsel you did not go to the bank to have them put those stamped endorsements on the back of each one of them? A. No.

Q. And were these exhibits, these checks here, D, E and C—

THE COURT: Now pardon me. (Addressing Mrs. Coe #2) Don't shake your head.

MRS. COE #2: I wasn't even looking at the witness, Your Honor. I was talking to my sister.

Q. Do you say that these Exhibits D, C and E were without these First National Bank of Nevada stamps when you delivered them? A. No.

Q. You don't say that, do you? A. No.

Q. Well, why don't you tell us how they got on there?

A. Because I don't know.

Q. How long before September 18, 1942 did you know that you had to pay \$7500 to Mrs. Coe, for Mrs. Coe #1, and \$1000 for her counsel?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I don't know.

Q. You don't know? A. No.

Q. Well, you recollect and do the best you possibly can to give us the days before you actually delivered those checks.

MR. MASON: Just a moment. Perhaps that question is intelligible; it isn't to me.

Q. Do you understand my question, sir? Do you understand my question? A. Yes.

Q. Answer it, please.

A. I gave these three checks to Alan Bible. From then on, I don't know. Those checks were given to Alan Bible. From then on, I don't know.

Q. Well, you tell us how long before September 18, 1942, which is the date of these checks, you knew or had information that you were to deliver over \$7500 for Mrs. Coe #1 and \$1000 for her counsel.

MR. PERMAN: Objection.

WITNESS: No.

THE COURT: You may have it.

MR. PERMAN: Exception.

WITNESS: No.

Q. You don't know? A. No.

Q. Do you say that September 18, 1942 was the first time you knew about payment of this money? A. No.

Q. How long before—you knew it before, did you? A. No.

Q. Well, when did you first know that you were to deliver over Exhibits D, E and C? A. I don't know.

Q. Did you know it the day before September 18, 1942? A. Yes.

Q. Did you know it the day before that? A. No.

Q. So that September 17th you say— A. No.

Q. Pardon me, I had not finished the question. September 17, 1942, is that the first time you ever knew that you were to pay \$7500 for Mrs. Coe #1 and \$1000 for her counsel? A. No.

Q. Well, how long before that did you know it? A. I don't know.

Q. You don't know? A. No.

Q. Well, you knew it September 17th, didn't you? A. I don't know.

Q. Well, didn't you know it on September 10, 1942?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. What was that again?

Q. Pardon? A. Will you repeat that question, please?

THE COURT: He said: Didn't you know on September 10 that you were to pay \$7500—didn't you know on September 10 that you were to pay this money?

WITNESS: No.

Q. Well, when did you put your signature on these exhibits, these three checks? A. September 18th.

Q. And you remember that pretty well, don't you?

A. That's the date.

Q. Don't you remember when is the first time that you knew that you were to issue these checks? A. No.

Q. Have you any recollection about it? A. No.

Q. Well, was there any talk before September 18, 1942 between you and your counsel with respect to payment of \$7500 and \$1000? A. Yes.

Q. How long before that date? A. I don't know.

Q. What is your best judgment? A. I couldn't say to that.

Q. And you don't recollect what the date of it was? A. No.

Q. Now Mr. Coe, I ask you to produce any formal documentary statements by you which give the exact place of your residence in the state of Nevada from 1940 right up to the present time.

MR. PERMAN: Objection.

Q. You have been summoned here, have you not?

THE COURT: You asked a question and he objected.

MR. FUSARO: I am sorry.

THE COURT: I thought you were getting something to substantiate it.

MR. FUSARO: The summons.

THE COURT: Well, do you waive your other question? You see, you have put another question to the witness.

MR. FUSARO: I see; very well.

Q. You have been summoned here have you not? A. Yes.

Q. Have you got your summons? A. No.

Q. Where is it? A. I don't know.

Q. Did you give it to your counsel? A. I think so.

MR. FUSARO: I ask you to produce it, sir.

MR. PERMAN: I haven't got it.

MR. FUSARO: I ask you to produce the summons that Mr. Coe gave you.

MR. PERMAN: I haven't got the summons.

Q. Well, I would like to have you examine this document. That is a copy, is it not, of the summons that you got? A. Yes.

MR. FUSARO: I offer it, Your Honor.

MR. PERMAN: May I see it?

MR. FUSARO: Certainly. (Hands paper to Mr. Perman)

MR. MASON: No objection. (MARKED EXHIBIT 6)

MR. FUSARO: This is Exhibit 6, a copy of summons served on this respondent (handing exhibit to Court). Now if Your Honor please, I press my previous question. The question was with respect to the production of the formal documentary statement.

MR. PERMAN: May the stenographer read the question so all of us may have it?

THE COURT: I think I remember it; I don't think the witness would remember it.

MR. PERMAN: I'm not so sure I do now.

THE COURT: But I don't think, Mr. Fusaro, the witness would think of that from this paper. I wouldn't if it was served on me.

MR. FUSARO: Very well, Your Honor.

THE COURT: Because I don't think it is specific enough. I don't know just what you had in mind with reference to documentary evidence that would prove his residence in Nevada.

MR. FUSARO: You say that the question is not allowed?

THE COURT: You may ask him if he has anything.

MR. FUSARO: Very well, Your Honor.

Q. Have you any formal documentary statements in which you stated a certain definite place of residence in the State of Nevada at any time beginning in 1940 right up to the present time?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Well, what it is you wanted?

Q. Do you understand my question? A. If I had any documents?

Q. I asked you to produce them.

A. I cannot produce them; I haven't them on my person.

Q. Have you them available?

MR. PERMAN: Objection.

THE COURT: Well, first, have you any?

MR. FUSARO: Yes, Your Honor.

Q. Have you any available?

MR. PERMAN: Objection.

WITNESS: I have certain papers; I have papers. I don't know just what you mean.

THE COURT: There may be none in existence.

MR. FUSARO: Yes, I see.

THE COURT: That is, so it would seem to me. Perhaps you had better ask him if there are any papers that would show his residence in Nevada.

MR. FUSARO: Very well, Your Honor.

Q. You stated that you organized Tarbox Realty Company? A. Yes.

Q. And when you organized Tarbox Realty Company did you give Nevada as your place of residence?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

THE COURT: As I remember, it was Tarbox Realty Company. There were two companies. That was organized since he went to Nevada.

MR. FUSARO: That's right; that's what he said on the stand the other day. And Tarbox Company was organized under the laws of New York.

MR. PERMAN: One was organized, if Your Honor please, in 1939.

THE COURT: One was organized when he didn't claim Nevada—

MR. FUSARO: Tarbox Inc.; and Tarbox Realty Co., that was organized since, he testified.

THE COURT: I have the date of it here (referring to notes). I have it here that Tarbox Realty Co. was the later corporation.

MR. FUSARO: That is right; that's the one I inquired about, Your Honor.

THE COURT: I thought I had here the date.

MR. FUSARO: I asked him about the incorporation, and as I recall his evidence he said that he, his wife and Mr. Perman were the incorporators and that he purchased 30 Forest Street in the name of the corporation.

THE COURT: When was Tarbox Realty Co. organized?

WITNESS: I think in '43

THE COURT: You think it was in '43?

WITNESS: Yes

THE COURT: Then you may have it.

MR. PERMAN: Exception.

(Stenographer reads aloud last question)

WITNESS: I don't know.

Q. You don't know? A. No.

Q. Didn't you give Worcester as your place of residence when you organized Tarbox Realty Co.?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. I don't know.

Q. You don't know? A. I don't know.

Q. Well, see if you can remember that, sir, and give us your recollection, because you say you have been a citizen of Nevada.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I don't think he said "citizen."

Q. You claim you are now a resident of Nevada?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. Is that right? His Honor says you may answer. A. Yes.

Q. And you claim you have been a resident of Nevada since 1942?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. Is that right? A. Yes.

Q. Now see if you can't recall, when you incorporated Tarbox Realty Co., what was your place of residence as stated in the organization agreement.

MR. MASON: I don't think that this pre-supposes that the place of residence in organization agreement is required. I know the Post Office address is required; I don't know of any place of residence. I object to the question.

THE COURT: The inquiry is not as to whether it was required or not; it is whether he gave it or not.

MR. PERMAN: I suppose, Your Honor, the corporation records would probably be the best evidence of what it contained—not only what it contained, but when it was formed.

MR. MCKEON: Will you bring them down? You are the clerk, aren't you?

MR. PERMAN: You are making inquiry; I am not.

MR. MCKEON: I am requiring you to bring them down.

MR. MASON: Well, don't make so many demands.

MR. MCKEON: If you don't agree to it, I will put you on the stand.

MR. MASON: That doesn't scare me.

MR. McKEON: I am not trying to scare you.

THE COURT: Just a minute, Mr. McKeon. I have it that he testified that he was president and treasurer of Tarbox Realty Co. He may answer what he gave as his residence.

MR. PERMAN: Exception.

Q. What is your answer? His Honor says you may answer, sir.

A. I don't know.

Q. You don't know? A. No.

Q. You are saying you don't know because you are aware of the fact that you gave Worcester as your residence, sir?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I left everything to Mr. Perman.

Q. Oh, you left everything to Mr. Perman, your counsel? A. Yes.

Q. And you signed them, sir, with full realization of what you were doing—or do you say now you were confused too?

MR. PERMAN: Objection.

THE COURT: You have two questions there.

MR. FUSARO: Yes, Your Honor.

MR. MASON: Both improper.

Q. You say you don't know because you realize your address or place of residence was given as Worcester? A. No.

Q. You say Nevada was the place of residence given in that agreement of incorporation with respect to the corporation, Tarbox Realty Co.?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: I don't know.

Q. Well, you had in mind that you were a resident of Nevada all the time, didn't you? A. Yes.

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. You think you stated that you were a resident of Nevada when you signed the articles of incorporation with respect to the Tarbox Realty Co.

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer.

A. I signed the papers, and that's all I know.

Q. I see.

MR. MASON: Is it necessary to have any comment by counsel after the witness answers, as happens regularly here? I don't think it is necessary, and should not be permitted.

THE COURT: Well, counsel sometimes make comments. It happens frequently in cross examination.

Q. So, Mr. Coe, you came on from Nevada to dispose of your properties here, is that what you tell the Court? A. Yes.

Q. Yet you acquired a pretentious home at 30 Forest Street this city?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer, sir.

A. I consider that an investment.

Q. You consider your home an investment, do you?

A. That isn't a home.

Q. Well, it is a more pretentious place than 6 Boynton Street, isn't it?

A. Yes.

Q. How many rooms did you have at 6 Boynton Street?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

Q. His Honor says you may answer. A. I think it was six.

THE COURT: That is, I am basing it on this: On the stand he testified he once lived at 6 Boynton Street.

MR. FUSARO: That's right.

THE COURT: He testified he lived at 6 Boynton St. and 2 Boynton St.

MR. FUSARO: That's right.

THE COURT: You don't claim that he never lived there?

MR. PERMAN: He lived over on Boynton Street, no doubt about that. I am not basing my objection with reference to any possibility that he may not have any knowledge as to the number of rooms. I think we are getting—

THE COURT: Are you basing it on the fact that he never lived there?

MR. PERMAN: No, not on that fact.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q: How many rooms? A. Six or seven rooms.

Q. And how many rooms up at 30 Forest Street?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Fourteen.

Q. And 30 Forest Street, Worcester, is in a nicer residential district than 6 Boynton Street—you know that, don't you?

MR. PERMAN: Objection.

THE COURT: He may answer.

WITNESS: I know it is a good investment.

MR. PERMAN: Exception.

Q. I am asking you it is a finer residential district than 6 Boynton Street? That's right, isn't it; nice residential district?

THE COURT: Well, the word "nice" is used in a technical sense and has an entirely different meaning. Mr. Perman may be objecting because the word has two meanings—one a popular meaning, which is not correct, and one a technical meaning. The word "nice" technically means intricate. People use it popularly in an entirely different sense. Is that your objection?

MR. PERMAN: That is one of the objections, if Your Honor please. But basically it goes to what I regard as evidence that is pretty remote from any of the issues that are involved under the plea in bar.

THE COURT: Well, I will rule that it is not too remote, but that it is indefinite by reason of the use of the word "nice."

MR. FUSARO: Very well, Your Honor.

Q. Do you consider 30 Forest Street a better residential district than 6 Boynton Street?

MR. PERMAN: Objection.

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: Yes.

MR. FUSARO: That is all.

MR. PERMAN: May I have a moment, if Your Honor please?

THE COURT: Yes. (Mr. Perman confers with Mr. Mason)

MR. PERMAN: No further questions; that is all.

MR. PERMAN: At this time, if Your Honor please, I should like to offer in evidence the deposition of Alan Bible which was filed in this Court on October 17, 1944, and bears the docket number in red ink on the right hand side, "83." And with Your Honor's permission I should like to read it into the record in question and answer form as appears in the deposition.

MR. MCKEON: One by one?

MR. MASON: Show it to the Court first. (Mr. Perman hands same to Court)

MR. MCKEON: May it please the Court, if that is an offer of the whole document all at once, I object to it.

MR. MASON: There is no intent to do that.

THE COURT: He states he has no intent to do that.

MR. PERMAN: With Your Honor's permission—

MR. MCKEON: Just a moment, please, until I complete my statement. I further object that it does not appear by the Commission to be applicable to the plea in bar.

MR. MASON: You cannot tell that until we get the questions and answers in.

MR. MCKEON: If you read the commission perhaps it can be—

THE COURT: You mean the commission addressed to the Commissioner?

MR. MCKEON: Yes, Your Honor.

(The Court reads aloud same)

THE COURT: You say that that was not applicable to the plea in bar?

MR. MCKEON: It refers to the separate support proceedings which I understand have been finally adjudicated and are not pending before the Court. There is a petition—

MR. MASON: Well, let's settle that right now.

MR. PERMAN: We may be getting into something interesting here.

MR. MCKEON: Well, I think perhaps we are. There is pending a petition for an increased allowance, a petition for contempt—both filed

by Mrs. Coe; a petition for modification, by Mr. Coe; and an original plea in bar filed by Mr. Coe in the separate support proceedings, and a new, a substitute plea in bar filed, and the petition for contempt, and the petition for increased allowance. I would prefer, if I might reserve leave, to renew this objection after the deposition is examined and offered to the Court and any objections that are reserved or passed upon one by one. But I think it is not a wholly groundless objection.

THE COURT: Well, I will rule, Mr. McKeon, that these are separate support proceedings; they are all proceedings under Section 32 of Chapter 209, and we commonly call those separate support proceedings. All those proceedings arise under that Section.

MR. McKEON: Well, may I not reserve the right to renew this objection again?

THE COURT: You may renew it later if you think necessary.

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION

MR. McKEON: May it please the Court, I would like to offer a suggestion with reference to the deposition offered by Mr. Perman. It seems it is quite lengthy; we have no copy; it consists of interrogatories and cross interrogatories; on both sides objections are made; it contains references to Nevada statutes and Nevada cases. We think it would save time if we could get copies made for study, and thereupon determine what, if any, objections are worthy of consideration of the Court; and in the meantime, the respondent can offer further evidence.

MR. MASON: In response to that, I should like to point out that this deposition has been on file in this Court since sometime in October.

THE COURT: Even so, it seems to me that if Mr. McKeon's statement is correct, it would be very difficult for me to rule upon matters unless I had a copy. Is there something else that you could put in this afternoon?

MR. MASON: Well, this probably comes in the order of our evidence and it would be very difficult to change the order I should think, Your Honor.

MR. McKEON: If there are citations of cases, for example, there are no quotes of those cases, we feel that in order to support any objections that might be made we ought to know whether—

MR. MASON: Well, as far as counsel for the petitioner are concerned, they have had access to this deposition since last October. As far as the Court is concerned, I am perfectly willing to do anything that will be more convenient for the Court. Except that it will be very difficult for us to change the order of our evidence, and we would like to proceed now with the deposition, and if Your Honor feels that copy would be convenient we will endeavor to have one prepared immediately.

THE COURT: Well, it would be more than just convenient. It would be very helpful. Have you anything that you could put on for about an hour? I would like to suspend at 3:30 in order to see what arrangements I can make on travel, on account of the storm.

MR. MASON: Will Your Honor give us a moment, please?

THE COURT: Yes. (Messrs. Mason and Perman confer).

MR. PERMAN: May it please Your Honor, the answers to these depositions involve some fourteen pages, and if I may say so without prejudice, they contain recitals and references to a number of cases bearing upon Nevada law. We do want to have this in evidence before offering further testimony in the matter. It occurred to me that in order that Your Honor may have it, I would be willing to proceed to put it in provided Your Honor would accept it de bene, later subject to such objections that may be made with reference to its further admissibility. In that way, Your Honor will have it and have the benefit of such study of it as Your Honor might desire.

MR. McKEON: I would have no objection to that, Your Honor.

THE COURT: All right.

MR. PERMAN: I have been trying to locate, if Your Honor please—those are the answers, and I have been trying to locate the interrogatories themselves.

THE COURT: I thought they were here. I thought I saw them there. I might be mistaken.

MR. PERMAN: Yes, they are. May I proceed?

THE COURT: Yes.

MR. PERMAN: I am referring now, Your Honor, to the deposition of Alan Bible, taken pursuant to a commission issued by this Court on the 18th day of September 1944. It is the deposition of Alan Bible, that reads as follows: "Be it remembered that pursuant to the annexed commission", etc., reading aloud same).

MR. MASON: "1. State your full name and address."

MR. McKEON: Wait a moment.

THE COURT: I didn't understand you were going to put it all in now. I thought we were going to consider it in de bene. Is that your understanding?

MR. McKEON: Certainly.

MR. PERMAN: You mean the deposition itself?

THE COURT: All of it, for the present.

MR. PERMAN: May it be marked for identification as offered de bene?

THE COURT: Suppose we mark it F for identification.

(Alan Bible Deposition marked F for Identification).

(Mr. Perman then hands same to Court).

MR. MASON: Would Your Honor prefer another copy in addition to that exhibit marked for identification? I am sure counsel would have no objection to Your Honor's taking it along with you if you would find it helpful.

THE COURT: I don't think we will need it before I come here again; and a week will elapse, and I think perhaps they could do it here in the Registry.

MR. FUSARO: They can have photostats made. I am pretty sure they could have them within a day. They could have it done today and they would be available, from my experience, tomorrow.

THE COURT: While we are on the subject, next week I will have to be in Springfield. I have made arrangements so I could be here the week after.

MR. PERMAN: I was assuming Your Honor was coming here Monday morning, and I was thinking of some way by which Your Honor could have it over the week-end.

THE COURT: No, I cannot be here next week. (Brief colloquy followed).

THE COURT: Suppose I ask Mr. Donohue to make a copy for me and to make a copy for each side. (Mr. Donohue sent for)

MR. PERMAN: May it please the Court, we had not planned to go ahead with any further evidence until the depositions were actually in evidence, containing as it does the Nevada laws which become an essential part of the respondent's case at this point.

MR. MASON: I think, too, we would all welcome an early adjournment after a week of it.

MR. FUSARO: We certainly don't. If he has any further evidence he ought to offer it. We feel if he has it, now is the time to offer it.

MR. MASON: I understood, Your Honor, that this delay in introducing the deposition was for the accommodation of both Court and the petitioner, and not for our accommodation; and we have already expressed to the Court that it is necessary in the orderly introduction of our evidence at this time to introduce the deposition. If the Court directs us to at this time, we are perfectly willing to go ahead. I understood in the first place that it was for the accommodation of the Court and of counsel for the petitioner.

MR. PERMAN: Along the same lines, it may well be that it would be essential for the proper consideration of such further testimony as we may offer that the deposition be fully read by Your Honor and its contents divulged to Your Honor. We had planned, and it was our intention that that deposition be in evidence before we proceed any further, and it was purely as a matter of accommodation that I suggested the course that was eventually adopted.

THE COURT: Isn't the situation the same as if it was in evidence?

MR. FUSARO: Yes.

MR. PERMAN: Not from our point of view, Your Honor.

THE COURT: In what respect?

MR. PERMAN: We intend to rely upon certain of the evidence and it becomes important that it really be evidence before we proceed any further.

MR. MCKEON: It is evidence.

MR. PERMAN: It becomes important to determine, Your Honor, as I assume objections will be taken to some of it as has been indicated, what will be evidence and what will not be evidence, and if we are going to be forced to proceed along the line that we had not contemplated and that we had offered for the purpose of accommodating counsel, who apparently now insist on taking advantage of the accommodation, we shall resume to make that evidence and present our case as we think proper.

MR. MCKEON: If Your Honor please, my original statement, and I was very careful to state it, was with the deposition out of the way temporarily the respondent might go forward with further evidence, and I think all the discussion that has been heard about it follows that original statement which I think counsel for the respondent has heard.

MR. PERMAN: We don't want the deposition out of the way; we want it part of the evidence.

MR. MCKEON: It is part of the evidence now.

MR. PERMAN: It is part of the evidence?

MR. MCKEON: Yes.

MR. PERMAN: May it be marked as an exhibit, Your Honor? The respondent insists it now be marked as an exhibit in evidence before Your Honor.

THE COURT: Well, I don't think that was the understanding.

MR. PERMAN: That was the statement just made, and we accept that statement.

THE COURT: The understanding was that it be accepted de bene.

MR. PERMAN: As I understood that remark by counsel—

MR. MCKEON: You are solely responsible for your own misunderstanding.

(At request of Mr. Perman, above remark of Mr. McKeon excluded)

MR. MCKEON: I still would have no objection to its being marked in exhibit de bene subject to exceptions and objections made by either, including himself.

MR. PERMAN: I move that remark be stricken from the record, and I press my request that it be marked as an exhibit.

THE COURT: Well, I won't strike the remark from the record and I won't accept it as evidence, because it is my understanding that it is still in de bene and that that is its status, and that that is all that Mr. McKeon intended.

MR. PERMAN: Well, the respondent excepts to that. I think his comment is clear, his statement is clear.

THE COURT: Well, we will adjourn now and I will be back here, that is, if I am able to, a week from Monday. We can take it up then, and there won't be any business of de bene or non de bene.

(Suspended to 10 A.M. Feb. 19, 1945.)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FEBRUARY 26, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,
Commissioned Stenographer.

FEBRUARY 19, 1945 HEARING

THE COURT: I notice I have the answers here, but not the interrogatories.

MR. MCKEON: This was in an envelope, Your Honor. May I suggest, if Your Honor please, there are cases referred to in Bible's answers. It will be necessary to make comparison of them with other Nevada cases. We have not as yet completed our review of that deposition. It seems to me it would be in the interest of county time and effort if the deposition were taken up at the time the Nevada law is being offered.

THE COURT: That might be so, except that we have run into so many objections; of course this is a case where we have run into an unusual number of objections and exceptions in any event, and that seemed to be the trouble that we were having when we suspended.

MR. MCKEON: Well, we intended to make no objection; we have no objection as yet. As I understood, the deposition went in de bene and the right was reserved from both sides to make any objections with reference thereto at a later time. I do not anticipate at the present moment any serious objection upon our part to the contents of that deposition. There will be some; not too many; and if we have the time to make a little more careful investigation it may well save time instead of losing it.

MR. MASON: I had understood, If Your Honor please, that during the week's suspension of the trial counsel would have an opportunity to go over the deposition and that that was the reason that photostatic copies were made. In the course of the orderly presentation of our case under the plea in bar it is essential that we now proceed to introduce it in evidence, and we shall make certain requests after our evidence is introduced on the plea in bar. Therefore we should not proceed now in our introduction of evidence on our plea in bar—

THE COURT: I must say I thought it was agreed by everybody that when we resumed this morning that we would go ahead with this deposition.

MR. McKEON: Well, I am sorry; I am sure I did not intend that myself.

THE COURT: You remember we suspended about an hour early on that Friday.

MR. McKEON: That is true. Well, it is really a question for Your Honor. I don't see myself that it would be advantageous to consider cases in this deposition apart from other cases, which is very likely necessary when we arrive at the point where we offer the Nevada law.

THE COURT: I thought we had arrived at that point.

MR. McKEON: I did not understand so. I understood the deposition was set aside in order to allow the respondent to go forward with the remainder of his evidence, and that then we would take up the deposition. Perhaps I misunderstood.

THE COURT: Well, this is my understanding: That on that Friday afternoon, I can't remember the date, but it was a week ago last Friday, in the afternoon we had reached the point where we were considering this deposition, and because everyone did not have a copy of it we suspended early so that copies could be prepared when we took up the case again; and that when we did reconvene that the first matter taken up would be this deposition.

MR. McKEON: It may be; but that was not my understanding.

THE COURT: That was my understanding, and I think if we don't tackle it now we will be in more trouble, at least I will be.

MR. McKEON: Whatever Your Honor wishes. Perhaps if Your Honor would use that and let me struggle with this—

THE COURT: Well, the questions are not in that one.

MR. McKEON: No, but they are in this (indicating).

THE COURT: All right.

MR. McKEON: I see no objection to Interrogatories 1 to 8.

MR. MASON: Do you want to have us proceed first with the introductory part?

MR. McKEON: I am interested in saving time; unless the Court thinks that is improper.

THE COURT: I think that was proper.

MR. MASON: I have no objection to his statement, but I thought we might make—

THE COURT: Go ahead.

MR. PERMAN: If it please Your Honor, I think before suspending at the last sitting we had arrived at the deposition of Alan Bible pursuant to a commission issued by this Court. The deposition starts as follows: "Deposition of Alan Bible. Be it remembered," (etc., reading aloud introductory portion of deposition). Now with the Court's permission, I should like to have Mr. Mason read the interrogatories and I shall read the answers, for the purpose of the record. (Mr. Mason reads aloud Interrogatories 1 to 8 inclusive, Mr. Periman reading aloud answers thereto, without interruption. Mr. Mason reads aloud Interrogatory #9 to and including (b).)

MR. MCKEON: I object.

THE COURT: Read (b) again, please.

STENOGRAPHER: "(b) In brief, the place and circumstances giving rise to such cause or causes."

MR. MCKEON: I am objecting to (a) first, Your Honor.

THE COURT: Read (a), please.

STENOGRAPHER: "(a) The ground or grounds Mr. Coe intended to rely on."

THE COURT: Well, I will rule that he may have it.

MR. MCKEON: Will Your Honor let me make a statement on it?

THE COURT: Yes.

MR. MCKEON: The question seems to me to be equivocal unless it be read with the next prior question which refers to the conference of June 11 with Bible and has no fixed habitation. The time element is uncertain. If counsel says they offer it in connection with the answer to the next prior question I think I will have no objection.

MR. PERMAN: I will so offer it, Your Honor.

THE COURT: Well, I think that it would be in any event.

MR. PERMAN: Yes, I think it is perfectly clear from the context.

THE COURT: All right. I will rule it may be so read.

MR. PERMAN: To Interrogatory 9 he answered, "(a) Mr. Coe intended to rely upon the statutory ground of extreme cruelty. (b) It is likewise—

MR. MCKEON: I object. Wait a moment.

THE COURT: Are you objecting to the question or answer?

MR. McKEON: Objecting to the answer, Your Honor.

THE COURT: Do you wish to state your reasons?

MR. McKEON: First, if Your Honor please, I ask you to strike out the word "and my pencilled memorandum shows," I suggest it was not responsive; the memorandum was not subjected to cross examination. It couldn't be used here if he were on the stand and the answer ought to be confined to the statement of his recollection; and that goes for the words later on, "according to the memorandum in my own handwriting," and again, "my memorandum shows"; and again, on the next page, "in addition my memorandum made at the time of my first conference." I suggest all those ought to be stricken out.

THE COURT: It states at the beginning of the answer, "It is likewise my recollection." Now it is not clear from the answer just what is his recollection and just what his memorandum shows. It is clear in the first part of it, reading it in this manner: "It is likewise my recollection and my pencilled memorandum shows." Now if we leave out "and pencilled memorandum shows," we read it, "It is likewise my recollection," leaving that out, "that Mr. Coe intended to rely upon the incident which occurred, according to the memorandum in my own handwriting," leaving that out "on April 14, 1942, in the state of New York," that much of the answer may stand, leaving out the references to "my memorandum."

MR. McKEON: Would that be, I take it, four references?

THE COURT: Well, there are only two up to that point.

MR. McKEON: In that answer I think there are four.

THE COURT: Up to that point there are only two.

MR. McKEON: I'm sorry, I don't know what you mean by that.

THE COURT: Up to the point where I read; up to the words "in the state of New York."

MR. McKEON: I see. There are two in that.

THE COURT: Well, I will rule that the answer may stand with the references to the memorandum stricken out, and the answer standing as, "It is likewise my recollection," then leaving out all references to the memorandum the answer may stand.

MR. McKEON: I have one more suggestion, if Your Honor please.

THE COURT: Go ahead.

MR. McKEON: Where it states that Mr. Coe intended to rely, I suggest that the form in which that is put here it is not admissible. The fact would be if he were on the stand he would be forced to say "Coe said to me that he intended to rely on it." Here it is merely in the form of a statement of fact, as if he were entitled to testify, instead of the statement Coe told me that he intended to rely upon it.

THE COURT: I don't fully agree with you. Doctors who have been consulted by a patient are permitted to come into Court and state facts and conclusions arising from their consultation with the patient. I think it is likewise the law that the attorney may testify to conclusions he reached from conversations with his client.

MR. McKEON: I take it that might be so if it means "This is my opinion," which it doesn't. I don't think he is competent to pass upon—

THE COURT: He has stated about a conclusion which is the result of having arrived at an opinion.

MR. McKEON: Well, I don't know that I would quarrel over that.

THE COURT: It is like the statement in mathematics that things which are equal to the same thing are equal to each other.

MR. McKEON: Well, I'm content with that.

THE COURT: The conclusion is the result of having arrived at an opinion.

MR. McKEON: I am content with that. It is very difficult to state all these. There is the same difficulty with the time element here that we had before. He intended when? It doesn't state.

THE COURT: Well, I think we may reach the conclusion that he is talking about the conference he had with Mr. Coe on June 11th.

MR. McKEON: I have no objection.

MR. PERMAN: May I proceed to read the entire answer to (b) subject to the construction Your Honor has placed upon it? I think the answer ought to appear in the record.

THE COURT: Suppose I read it.

MR. PERMAN: All right.

THE COURT: "It is likewise my recollection that Mr. Coe intended to rely upon the incident which occurred on April 14th, 1942 in the state of New York. Mrs. Coe on or about that day phone him twice; that she later came up in the elevator to his apartment; that thereafter she talked about various phases of the case, and that upon leaving she told him that

she would make more trouble if he, "(Martin)" started anything. In addition that she, (Mrs. Coe) "told him 'I will kill you if I see you with anybody else.'" And then the question.

(Interrogatory #10 and answer thereto read aloud, without objection. Interrogatory #11 read aloud by Mr. Mason)

MR. McKEON: I object.

THE COURT: The answer may be given.

MR. PERMAN: To Interrogatory #11 he answered, "He did."

(Interrogatory #12 read aloud)

MR. McKEON: I object.

THE COURT: He may answer.

MR. PERMAN: To Interrogatory #12 he answered: (Reads aloud answer)

(Interrogatories 13 to and including 27, and answers thereto, read aloud. No objections registered)

(Interrogatory 28 read aloud, and answer thereto read aloud as to first paragraph)

MR. McKEON: Now I object to the following paragraph.

THE COURT: What is your objection, Mr. McKeon?

MR. McKEON: It seems to me that it is not within the purview of the inquiry; as I understand—what is your opinion and what are the applicable laws—are not at all any statement of facts.

MR. MASON: I think Mr. McKeon is unduly restricting the question.

THE COURT: Well, I will rule that that part of the answer may stand for this reason; this is how it seems to me: He has been asked if the Court has jurisdiction and he stated what the law was, and then he stated what happened.

MR. McKEON: Which I think he was not asked; he volunteered that paragraph.

THE COURT: He was asked in 27 if they had jurisdiction.

MR. MASON: Over the party.

THE COURT: Well, there may be some question whether or not Question 27 asks what the facts were, in other words, what happened which would bring these particular facts within the statute. Well, I suppose it might be said that he volunteers the facts,

MR. MASON: At best wouldn't it be discretionary with the Court on the question whether or not the question was responsive to permit an expert witness to explain that opinion as he rendered it. I think it might still be responsive.

THE COURT: I think that is so; I think it may fairly be said that that is so. I will permit the latter part of the answer to remain.

MR. MCKEON: Then save my rights, Your Honor.

MR. PERMAN: Continuing with the answer to Interrogatory #28, paragraph: "In this particular case the divorce complaint," (etc., reading aloud balance of answer to said interrogatory).

(Interrogatories #29 to and including #31, and answers thereto, read aloud without objection being registered).

(Interrogatory #32 read aloud. Answer read aloud down to last paragraph).

MR. MCKEON: I make similar objection to the balance of this answer in last paragraph.

THE COURT: The facts he has stated, in the paragraph you refer to, already appear in the answers in any event.

MR. MCKEON: Subject to my exception, if Your Honor please.

THE COURT: Well, since it adds nothing to it, and since leaving it out would detract nothing from the evidence that is in, I will exclude it.

MR. PERMAN: May I just say one word?

THE COURT: Yes.

MR. PERMAN: I think so far as this particular answer is concerned it involves a matter of statutory construction of the Nevada laws, namely, under the Nevada laws the fact that there was an appearance by document and physical would bring it within the terms of the statute, and I think that is extremely important as a matter of construction of the Nevada laws and interpretation of the Nevada laws and should be before Your Honor.

THE COURT: This is very important; but doesn't it appear earlier that that is the law of Nevada, and doesn't it appear earlier that—

MR. PERMAN: I think that may well be. There is no doubt but what the facts appear. That is, it is in evidence already even apart from the affidavit.

THE COURT: Yes.

MR. PERMAN: But in event there may be any question at all, I think Your Honor—

THE COURT: Well, I suppose here he is stating an opinion which, well, he was asked his opinion so I will allow this much of it in any event to stand: "The defendant Katharine C. Coe appeared by demurrer, by

answer and cross complaint and in person before the Nevada Court," which would bring her within the purview, as he states it, of Section 8573 cited by answer to Question 28 Supra.

MR. MCKEON: Satisfactory.

(Interrogatories 33, 34, 35 & answers thereto read aloud without objection)

(Interrogatory #36 read aloud)

MR. MCKEON: I object.

THE COURT: The answer may go in.

MR. MCKEON: Save our rights, if Your Honor please.

(Mr. Perman reads aloud answer to Interrogatory #36)

MR. MASON: "Interrogatory #38: Did you, as counsel for Mr. Coe, pray to Katherine C. Coe," can we all agree that "pray" as it appears here was a typographical error?

THE COURT: Well, it is clear that it is a typographical error.

MR. MCKEON: Not so clear. It at least means "pay."

THE COURT: You may have it that it means "pay."

MR. MASON: I will re-read #38: "Interrogatory #38. Did you as counsel for Mr. Coe pay to Katharine C. Coe or to her attorney on her behalf that sum of \$7500."

MR. PERMAN: To inquiry 38 he answered: "I paid the sum of \$7500 to H. W. Edwards as attorney, on behalf of his client, the defendant, Katharine C. Coe."

MR. MCKEON: Now if Your Honor please, one difficulty I have about that is that it does not state any time.

THE COURT: I suppose he might so answer whether it states the time or not. The answer might be incomplete or the evidence might be incomplete if no time was shown.

MR. MCKEON: I agree that is so, of course.

THE COURT: But the answer may stand nevertheless.

(Interrogatory 39 and answer thereto read aloud without objection)

(Interrogatory 40 read aloud by Mr. Mason)

MR. MCKEON: Just a minute please. In the second sentence of the first paragraph he refers to his calendar and his files, and the statement that follows does not appear to be any part of his recollection, and I move that that second sentence in the first paragraph to answer 40 be stricken.

THE COURT: Well, he answered this: It is my recollection that Mr. Coe consulted me a number of times during June of 1943.

MR. MCKEON: I make no objection to that.

THE COURT: All right then, that may stand. The next sentence may go out. Now he says, "It is my definite recollection that the Coes," I suppose it may be argued who he means by the Coes; but then I think it may stand, "were interested in purchasing property in Nevada." Well, the next statement that he makes about the Massachusetts proceedings, it is not clear just how the information came to him, whether it was hearsay or not. But Doctors are permitted on the witness stand to state what they have heard from their patient in hearsay; I don't know why lawyers should not. I don't know why the same rule should not apply to lawyers. I cannot remember any cases where it applied to lawyers, but I can with regard to doctors. Of course it is not exactly what he was asked, the first part of that (b). The last part: "I did tell them that they should return to Massachusetts and defend the suit there since in my opinion the agreement entered into in Nevada and the divorce thereafter granted were valid and binding upon both parties." Now that would be responsive to the second part of Question 40.

MR. MCKEON: Even if it is responsive, Your Honor, is it material to these issues?

MR. PERMAN: If it isn't material it certainly won't do any harm.

MR. MCKEON: I would be inclined to agree with that.

THE COURT: Well, I think that that's so. I think both statements are so. I don't think it is material and I don't think it does any harm one way or the other. He did return. In substance it is a statement of the fact that he advised Mr. Coe to return to Massachusetts and defend the action, and he already stated as his opinion that he thought the proceedings in Nevada were valid; so this statement is a mere repetition of that.

MR. MASON: Excepting, Your Honor, counsel for the petitioner spent a great deal of time cross examining Mr. Coe about his coming back to Worcester from Nevada, I suppose for some purpose. It was admitted in evidence.

MR. MCKEON: In that event, I think I should suggest it was purely a self-knowing hearsay evidence.

MR. MASON: And it might be competent to corroborate the testimony of Mr. Coe.

THE COURT: Well, as I stated before, Mr. McKeon, our Superior Court has allowed similar statement to be made by a doctor, and I don't know why the same reasons should not apply to a lawyer testifying.

MR. McKEON: I understand that you admit it?

THE COURT: Yes.

MR. McKEON: Then save my rights.

MR. PERMAN: I haven't read the answer to that into the record as yet.

MR. MASON: Does Your Honor wish to read it with any amendments you wish to make? It is answer to Interrogatory 40.

THE COURT: Well, part of it I excluded, didn't I, and that referred to the first part.

MR. McKEON: I have no objection to that since the reference to calendar and files is stricken out.

THE COURT: That I have already done.

MR. PERMAN: Well, shall I read it as it stands?

THE COURT: Now that statement, "It is my definite recollection that the Coes were interested in purchasing property in Nevada," that is not responsive and as long as there is objection it may go out. Now the next statement, "I believe that the proceedings in Massachusetts were started during the time that they were in Nevada," as long as there is objection, that may go out. Now the statement, "As near as I recall, I did tell them that they should return to Massachusetts and defend the suit there, since in my opinion the agreement entered into in Nevada and the divorce thereafter granted were valid and binding on both parties," now I take it he was asked for the conversation or rather what was said, and he has answered he has said that to them; and that may stand.

MR. PERMAN: May it please Your Honor, may I say something at this time?

THE COURT: Yes.

MR. PERMAN: With reference to Your Honor's exclusion of the sentence "It is my definite recollection that the Coes were interested in purchasing property in Nevada," I should like to direct Your Honor's attention first to the fact the whole matter of the intent of Mr. Coe has already been opened up.

THE COURT: Oh yes; but I am not ruling it out for that reason.

MR. PERMAN: Well, may I offer it for that reason, if Your Honor please, as showing his intent?

THE COURT: I would accept it for that reason, except that that is not responsive to the question. The question was—

MR. PERMAN: The question was: What was said on these occasions. And it seems to me that if Mr. Coe on those occasions expressed or evidenced an intent to acquire a home or property in Nevada that that would be not only material but responsive.

THE COURT: But he does not so state.

MR. PERMAN: "It is my definite recollection that the Coes were interested in purchasing property in Nevada."

THE COURT: Yes, but the question is: "What was said on these occasions."

MR. PERMAN: That is right.

THE COURT: When he says they were interested in purchasing property in Nevada he is not answering what was said.

MR. PERMAN: It may well be that he was.

THE COURT: It may well be that he intended to but did not.

MR. PERMAN: Well, I don't think it necessary for Mr. Bible to have repeated it as part of the conversation. I think in context with the question it could easily be understood and inferred that that was a summary of what conversation took place between them.

MR. McKEON: May it please the Court, if that be interpreted to mean that the Coes told Mr. Bible that they were interested in the purchase of property in Nevada I have no objection.

THE COURT: Then it may stand.

(RECESS. HEARING RESUMED)

MR. MASON: In connection with the deposition of Alan Bible the petitioner filed certain cross interrogatories headed as follows: Cross Interrogatories by the Petitioner to Alan Bible, the answers thereto not to be used in evidence unless his original answers to interrogatories are admitted in evidence and are germane thereto except as otherwise indicated. (Mr. Mason reads aloud Cross Interrogatories 1 to 6 inclusive; Mr. Perman reads aloud answers thereto.)

MR. MASON: "Cross Interrogatory 7: Assuming as facts that neither of the parties to said Nevada proceedings ever had a bona fide domicile in Nevada, what is your opinion as to the validity of the Nevada decree on September 19, 1942. In support of your opinion please give the controlling Nevada statutes and cite the decisions of the Court of last resort upon which you rely."

MR. MCKEON: Let me interrupt right there. The answer, if Your Honor please, I suggest is not responsive to the question.

THE COURT: No, I don't think that it is responsive. He is asked by the question to assume a certain fact and he does not.

MR. MASON: Of course the deponent in effect says he cannot make an assumption—

MR. MCKEON: He wasn't asked to do that.

THE COURT: You see, he is presented as an expert witness and he is asked a hypothetical question which he does not answer.

MR. PERMAN: I think it is clarified further by subsequent cross interrogatories and their answers; and I think it may well be advisable to construe them all as a whole.

THE COURT: Well, I would be obliged to construe it that he did not answer that question.

MR. PERMAN: Your Honor excludes it?

THE COURT: Yes, if he asks it to be excluded.

MR. MCKEON: Yes, I do, Your Honor.

MR. PERMAN: The respondent offers to prove the answer to cross interrogatory #7 is as follows: The question of residence is one of fact and was determined by the trial court, from which decision no appeal was taken. See Blaksley vs. Blaksley, 41 Nevada, 235, and cases cited therein. The respondent saves exception to the exclusion and makes the offer of proof.

THE COURT: That portion, "See Blaksley vs. Blaksley, 41 Nevada, 235 and cases cited therein" might be responsive except that I suppose it would depend on what he stated in the previous part of the answer, and since he does not answer the first part of the question, since he does not assume a fact which he is asked to assume, I think that makes the whole answer not responsive; and I so rule.

MR. PERMAN: The respondent excepts.

(Mr. Mason reads Cross Interrogatory #8)

MR. MCKEON: And to the answer, I object.

THE COURT: Well, I think he has answered that. Whether he has answered it correctly or not may be a question; but I think he has assumed there and I think he has given his opinion on that assumption. His answer may or may not be a correct one.

MR. MCKEON: I haven't any doubt it is incorrect.

THE COURT: Isn't that a matter of argument, and isn't it a matter of proof on your part?

MR. MCKEON: Yes, that much is. But I think it was not a responsive answer.

THE COURT: Well, I think that is. It may or may not be a correct answer. I think that is a matter of proof and a matter of argument.

MR. MCKEON: You are admitting it?

THE COURT: Yes.

MR. MCKEON: Will you save our rights.

MR. PERMAN: To Cross Interrogatory #2 he answered: (Reads aloud answer)

(Mr. Mason reads aloud Cross Interrogatory #9)

MR. MCKEON: I object to that answer.

THE COURT: No, he does not answer the question. He sets up an argument which may be a good argument but it is not an answer to the question.

MR. MASON: Of course the question is an argument too.

MR. PERMAN: May I make one observation, Your Honor?

THE COURT: Yes.

MR. PERMAN: The precise question, as I understand it, calls for an expression of opinion as to what effect the adjudication of certain matters in Massachusetts would have on the jurisdiction of a Nevada Court. I think the opinion expressed by Mr. Bible is certainly responsive, setting up what the procedure and the requirements are with reference to the Nevada laws as to when certain decrees become res adjudicata and the circumstances, and the requirements of the decrees of another state to become res adjudicata in Nevada.

THE COURT: I think all he has said in his answer would certainly be admissible if the answer was given to a proper question.

MR. PERMAN: These are the petitioner's cross interrogatories.

THE COURT: Yes.

MR. PERMAN: I don't think as a matter of procedure it is open now to the petitioner to say our question was an improper one and that therefore the answer ought not to be allowed.

THE COURT: No, he does not say that. As I understand it, he raises the question that the answer is not responsive to the question.

MR. PERMAN: And I submit, if Your Honor please, that is directly addressed to the subject matter that is raised in the cross interrogatory. Not only that, but it is comparable to our own law. You don't have a defense of res judicata; you may have a decree. But until it is set up and completed it is not available as a defense. The precise question is what is the effect of the Massachusetts decree in Nevada so far as it affects the jurisdiction of the Nevada Court. The answer is the defense; res judicata is not available unless and until it is specifically set up by way of pleadings. It is most responsive.

THE COURT: Well, he isn't asked concerning a plea of res judicata.

MR. MASON: It seems to me that is the whole purport of the question. Assume final adjudication in Massachusetts.

MR. PERMAN: It would have no meaning unless that was the purport and intention of the particular question.

THE COURT: His answer, if given as an argument in answer to that question, might be an effective one; but it is not a fair answer to the question.

MR. MASON: He is asked for legal opinion.

THE COURT: He is dodging the question, if I may use a slang expression, and interposing an argument in answer to it.

MR. MASON: I wonder if he is evading the question in any way, Your Honor. The question asks him to assume an adjudication in Massachusetts and asks his opinion as to the effect of that adjudication in Massachusetts on the jurisdiction of the Nevada Court to act, and it seems to me he gives a direct, specific reply to that question, namely, that insofar as it could have any effect on the Nevada Court it would have to be pleaded, and notwithstanding that it would not have any effect because of the facts relied upon in the Nevada Court.

THE COURT: Well, I will rule it is not a fair answer to the question.

MR. PERMAN: Save our exception, Your Honor.

THE COURT: For the reasons I have stated.

MR. PERMAN: The respondent offers to prove that to Cross Interrogatory #9 he answered the plea of res judicata, to be available as a defense to Mr. Coe's action in Nevada, should have been specifically set up and pleaded. In any event, as indicated in my answer to direct interrogatory #9-b and to cross interrogatory #6, it was the intention of Mr. Coe to rely on an incident occurring after the entry of the Massachusetts

order, and even if the Massachusetts order had been specifically treated in my opinion an adequate plea of res judicata would not have been raised

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION

(Mr. Mason reads aloud Cross Interrogatory #10 and Mr. Perman reads aloud answer thereto, with no objections)

(Mr. Mason reads aloud Cross Interrogatory #11)

MR. McKEON: I object.

THE COURT: To the answer?

MR. McKEON: Yes, Your Honor.

THE COURT: Suppose this is a correct statement of Nevada law. I don't know whether it is or not. The latter part of his answer: The Court found that plaintiff was a bona fide resident and it could not be presumed that the Court failed of its duty in regard to the fact pertaining to that issue. I don't know whether that is or is not the correct statement of Nevada law. But suppose it is.

MR. McKEON: Assuming it were, I would still think it was not in answer to the question. Perhaps I ought to say also that I do not suppose he is competent to state what the Court found.

THE COURT: Well, I think that he might so state, if the Court had stated in its opinion.

MR. McKEON: I think he might state that was his opinion, but I do not think he can state it in this form. He doesn't make the assumptions of fact that the answer requires.

THE COURT: No, he does not.

MR. McKEON: I mean the question.

THE COURT: Yes, I thought you meant that. No, he does not make the assumption. He makes no assumption. I will exclude the answer.

MR. PERMAN: Exception. The respondent offers to prove that to Cross Interrogatory #11 he answers: (Reads aloud the answer)

THE COURT: I exclude it because he fails to make the assumption asked for, the assumption of fact

MR. PERMAN: I should like to make one observation, if Your Honor please. Irrespective of the technical grounds of objection to the answer or these answers, it seems to me to be clear that they are admissible if

for no other reason than showing the relevant and pertinent Nevada law. I know of no other way to present the Nevada law to this Court as an issue of fact than to present it through the attorney general for the state of Nevada.

THE COURT: No other way?

MR. PERMAN: No better way.

THE COURT: Oh, I beg your pardon.

MR. PERMAN: It seems to me that apart from whatever other objection might be raised to these answers they would be admissible upon that ground alone as showing what the Nevada law is.

THE COURT: Oh, I think perhaps all of these answers would be admissible if they were answers to the proper questions, and those that I have excluded, all those that I remember so far that I have excluded, I have done it because he has not answered the particular question asked, and in this one because he fails to make the assumption that was asked.

MR. PERMAN: Even in reference to the assumptions, they are not assumptions that are warranted by anything in the evidence so far. I should assume that even if this witness were present any hypothetical questions directed to him would be hypothetical questions that were predicated upon a state of evidence in actual existence before the Court.

THE COURT: I wouldn't go so far as to say that there was no evidence before the Court upon which question #11 could be predicated.

MR. PERMAN: May I point out the definition of bad faith here. "Mr. Coe acted in bad faith alleging Nevada domicile or residence, that he merely intended to stay in Nevada until the marriage ties were dissolved and then return at once to his Massachusetts domicile." I am reading from Cross Interrogatory #10. As to that, it is an improper definition of bad faith and an assumption of facts which had not been offered in evidence.

THE COURT: Of course in any event their case is not finished, and you asked to put in the deposition of Mr. Bible at this time.

MR. PERMAN: That is right, Your Honor. I think clearly it ought not to be restricted at any rate insofar as it states . . . Nevada law.

THE COURT: Well, I would say, Mr. Perman, that the evidence contained in that answer would be competent evidence at this trial, but that it is not a proper answer to the question. And if objection is made I feel compelled to exclude it for that reason.

MR. PERMAN: I have my exception and offer of proof in already.

THE COURT: Yes. I think it might be said of all this that it is competent evidence.

MR. PERMAN: I thought I would direct your attention to the fact at least that I regarded it as evidence at least insofar as it did contain references to the Nevada law.

THE COURT: If you ask that the last line, "See Contra vs. District Court, 49 Nevada 26," if you ask that that may stand, why, while it isn't given as supporting a proper previous statement, it may stand.

MR. PERMAN: I think it might well be, Your Honor, that that case is cited to support the answer that was given. The statement, and I read the answer to Cross Interrogatory #11, "The Court found that the plaintiff was a bona fide resident and it could not be presumed that the Court failed in its duty—

THE COURT: Excuse me for interrupting, but I ruled that that was not a proper answer to the question. Now he might have given the proper answer and he might have cited Contra vs. District Court and so forth, and that might not be a proper citation to a proper answer.

MR. PERMAN: I hope Your Honor understands my position.

THE COURT: I do. I think I understand you, but I don't think you understand me.

MR. PERMAN: I think I understand Your Honor, but I merely wanted to point out to Your Honor that we think it ought not to be restricted with reference to its application to the Nevada laws, irrespective of other technical objections to it.

THE COURT: Well then, I will have to exclude it all.

(Mr. Mason reads aloud Cross Interrogatory #12. Mr. Perman reads aloud first paragraph in the answer to #12.)

MR. PERMAN: And in answer to the second paragraph of Cross Interrogatory #12, he answered:—

MR. McKEON: Now if Your Honor please, I object to all except the first and last sentence of page 14. That is, I don't object to the answer "It is impossible for me to answer this question in the absence of having a definition of bad faith or having been given facts indicating such bad faith." I don't object to the last sentence, "I do not know of any Nevada decisions or statutes bearing upon this particular question." But I do object to all between those two sentences.

THE COURT: Well, it seems to me that the statement, "In any event,

it occurred to me that the contract which Mr. and Mrs. Coe entered into is binding upon them until such time as it is set aside," it seems to me that that statement should stand, because he prefaces it by the statement "In any event," meaning assuming or not assuming. "In any event" means in any event at all, in any and all circumstances; so that it means in the event of assuming the things which you asked him to assume. Now the statement, "An opinion it seems to me may be given when the hypothetical questions are based upon facts established by proof in the case," it seems to me that has no place in the answer.

MR. PERMAN: I am willing to delete that from the answer, if Your Honor please.

THE COURT: All right. Now the phrase "as far as I know" assumes facts which do not exist and which have not been proved.

MR. PERMAN: I am willing to delete that from the answer.

THE COURT: Then the rest of it may stand.

MR. McKEON: And save our rights.

MR. PERMAN: In answer to the second paragraph of Cross Interrogatory #12 he answered: "It is impossible for me to answer this question in the absence of having a definition of 'bad faith' or having been given facts indicating such bad faith. And in any event it occurs to me that the contract which Mr. and Mrs. Coe entered into is binding upon them until such time as it is set aside. I do not know of any Nevada decisions or statutes bearing upon this particular question." The deposition bears the signature of Alan Bible, and the name Alan Bible in type. It is followed by the following: "State of Nevada, County of Ormsby, SS," (Reads aloud entire balance of document.)

THE COURT: This one bears the seal of John C. Kelly, Notary Public.

MR. PERMAN: Your Honor is referring to the original deposition?

THE COURT: Yes.

MR. PERMAN: May I at this time please direct Your Honor's attention to the following Nevada cases: Whise v. Whise, 36 Nevada, 16; Pease v. Pease, 47 Nevada, 124; Koch v. Koch, decided on October 13, 1944. I am sorry I haven't got the Nevada citation. It is a case decided by the Supreme Court of the State of Nevada; if it may be helpful, it is case #3412. The case of Prouse v. Prouse, 56 Nevada, 467; Blaksley v. Blaksley, 41 Nevada, 235. If it hasn't already been submitted in evidence, the case of Contra v. District Court, 49 Nevada, 36.

(Mr. Perman hands paper to Messrs. McKeon and Fusaro)

MR. PERMAN: I offer this certification in evidence, if Your Honor please. (MARKED EXHIBIT G)

MR. PERMAN: For purposes of the record, may I identify Exhibit G, which is a certification issued from the office of the Secretary of the Commonwealth under date of February 16, 1945, in substance certifying that the Tarbox Realty Co. was incorporated under the General Laws of this Commonwealth May 2, 1941.

MR. FUSARO: I assume you offer that to impeach the testimony of your own witness, Mr. Coe. Is that right?

MR. PERMAN: I offer it for the purpose of establishing the truth as to the date of incorporation.

THE COURT: Well, I think a party may introduce evidence which would be contrary to his own statement if it showed the true fact. I think our decisions bear me out.

MR. FUSARO: I think Your Honor is quite right.

MR. PERMAN: I offer it for that purpose, Your Honor. May it please the Court, so far as the plea in bar is concerned, the respondent rests. I should now like to suggest a recess, if Your Honor please, for the purpose of determining just what procedure the respondent will follow.

MR. MCKEON: I assume that also includes resting in the petition for modification by Mr. Coe which was ordered, the evidence was ordered to be taken in both at one and the same time.

MR. PERMAN: I am doing nothing of the kind. I think I made myself clear so far as the plea in bar is concerned on which we have been permitted to go forward.

MR. FUSARO: And the other too.

MR. MCKEON: The record will clearly show that I asked a ruling by Your Honor that the respondent was to go forward at one and the same time with the same evidence on his plea in bar and on his petition to vacate or modify, or whatever it may be considered here. I am perfectly willing to stand on the record.

MR. PERMAN: May it please Your Honor, I think it must be clear that Your Honor's attention was directed to a petition that apparently had no been referred to and it was for the purpose of consolidating all matters that Your Honor's attention was directed to that petition. I think, if Your Honor please, you will recall there was some discussion as to what

the effect would be of sustaining or denying the plea in bar with respect to the various petitions for modification and the petition for contempt that was filed. We have been proceeding on the plea in bar and particularly with reference to the specific attack on the defense as set up by the plea in bar by the petitioner on the ground that there was no domicile in the state of Nevada.

THE COURT: It seems to me that I should not require him to rest on the other petition because of the peculiar nature of the case and because you have not yet finished your case.

MR. MCKEON: Well, that might be all right perhaps as an original ruling; but it happens not to be, Your Honor. We went over all this at the time Mr. Perman insisted going forward on the plea in bar, and I called specific attention to his petition for modification and made no reference to ours, but that his petition for modification raises the same issues as his plea in bar.

MR. PERMAN: It does not.

MR. MCKEON: I agree you can go forward on the rest if you state any reference in your petition for modification not included in the plea in bar. Now that petition for modification by Mr. Coe, if Your Honor please, first, I think that we ought not to be arguing—it has been ruled on, if Your Honor please, that the plea in bar on which they went forward was to apply to their petition for modification.

THE COURT: Yes, I think that is so.

MR. MCKEON: Therefore, so far as the issues involved in the plea in bar are concerned, and the identical issues in his petition, his evidence must of necessity—he can't end with the other; he cannot take from us, who filed the original petition for contempt and a petition for increased allowance before his petition for modification—he can't cheat us out of the right to go forward with our evidence just because of the contradiction of the respondent who has been willing to introduce his evidence on the plea in bar under the rulings that that evidence was to apply to his petition for modification.

THE COURT: I don't think that that would necessarily be the result.

MR. MCKEON: If he goes forward now he is shutting us out of our right to go forward.

MR. PERMAN: We don't care what he does.

THE COURT: I don't think that that would be the result of it; I don't see that it would be, Mr. McKeon.

MR. MCKEON: Well that depends on the interpretation of what exactly and especially his petition for modification rests on. He states that it rests on the validity of the Nevada divorce. He doesn't state any other reason.

MR. PERMAN: One thing would be clear, that if the plea in bar is sustained there is no standing, the petitioner's petition for modification and her petition for contempt has no standing and the respondent's petition for modification must be sustained. With respect to that preliminary issue, it follows of necessity that the evidence with respect to the plea in bar applies to all those petitions as well as to the plea in bar. It is a preliminary matter on which evidence was received and has been received, and which will have a substantial bearing on the ultimate determination of these other petitions.

MR. MCKEON: I have no occasion to dispute the ultimate result of all petitions; what I am trying to discuss here is whether the respondent either generally or under the ruling of the Court after having rested on the plea in bar has a right to go forward with evidence outside of the issues raised in the plea in bar and in his petition for modification. I think he plainly has not. He doesn't ask the allowance of his petition for modification on any ground but one, namely, the validity of the divorce in Nevada. There is nothing else, as I take it, before the Court.

MR. PERMAN: I don't accept that description of my—

MR. MCKEON: I don't ask you to accept it.

THE COURT: It is a petition for revocation, not modification that you have brought?

MR. MASON: For vacation, I guess.

MR. MCKEON: It is not, if Your Honor please. It is entitled both, but it is neither.

MR. PERMAN: It would certainly seem that for orderly procedure and proceeding, the petitions for modifications ought to be heard together once the preliminary issue has been decided. It ought to be determined whether or not they would be here at all.

MR. MCKEON: I am not contending to the contrary on that.

MR. MASON: I wonder if there is any difference of opinion here at all. We rest, as far as the introduction of any further evidence goes on our plea in bar. We haven't asked to go forward on any evidence on the petition for revocation or modification.

MR. MCKEON: Well, I accept that.

MR. MASON: Well, I wonder what they are really arguing about.

MR. MCKEON: About the former ruling. You were going to put in your evidence on the identical petition you put in your original plea in bar. If that is their meaning now, I am content with that. And we go forward.

THE COURT: Well, I think that that is what they meant.

(RECESS. HEARING RESUMED)

MR. FUSARO: Mr. Perman, I ask you to produce the articles of association with respect to Tarbox Incorporated, as well as the charter.

MR. PERMAN: I haven't them with me.

MR. FUSARO: Will you produce them?

MR. PERMAN: I'm not sure at all that I can.

MR. FUSARO: You have them, I understand?

MR. PERMAN: I'm not sure that I have.

MR. FUSARO: You are the clerk, are you not?

MR. PERMAN: I am.

MR. FUSARO: Then I ask you to produce them.

MR. PERMAN: I heard you.

MR. FUSARO: Can you have them here tomorrow, if you haven't got them now?

MR. PERMAN: If I have them.

MR. FUSARO: If Your Honor please, I would like to have something more definite about these documents.

MR. MASON: Aren't they all matters of record?

THE COURT: Well, I think you know about them, the originals; I should think the clerk of the corporation would have the originals since he is clerk. Of course he is here present in the capacity of counsel for Mr. Coe. I suppose you might subpoena him and ask him to bring the records.

MR. FUSARO: Well, do you desire me to subpoena you, or will you bring them without a subpoena on my demand for a production of those records?

MR. PERMAN: I told you if I had them I would bring them. It occurs to me, if Your Honor please, that there shouldn't be any real dispute, if admissible, as to what the contents of the agreement of association and the charter are.

MR. FUSARO: No, I would like to have them.

MRS. DAWN EILEEN COE testified as follows:—

Q. BY MR. FUSARO: What is your name? A. Mrs. Martin Coe.

Q. What is your name, your own name? A. Mrs. Martin Coe.

Q. What is your own name, please? A. Mrs. Martin Coe.

Q. Well, that is your husband's name.

A. That is my name now, Mr. Fusaro.

Q. What is your own name? A. Mrs. Martin Coe.

MR. MASON: Just a moment. How many times must the same question be asked?

THE COURT: If you ask me to rule upon it, the name of a married woman is her husband's surname and her own given name; so the Massachusetts Supreme Court has decided.

MR. MASON: Yes.

THE COURT: Now I will so instruct her. If you claim that you are married to Martin Coe, you would take his surname, and your proper name would be your own given name with his surname.

WITNESS: I didn't know that, Your Honor.

THE COURT: That is a married woman's name in Massachusetts according to our decisions.

Q. What do you say your name is now? A. Mrs. D. Eileen Coe.

MR. MASON: I think the witness might be instructed too, as I understand—and if I am incorrect about this Your Honor will correct me—that the proper legal name of a woman if she is married to John Doe is Mrs John Doe, but she may have the legal name of Mary Doe when she gives that without prefacing it with a "Mrs."

THE COURT: I do not so understand.

MR. MASON: I think widows are referred to as Mrs. Mary Doe; or grass widows.

THE COURT: No, our Supreme Court has said otherwise.

MR. MASON: I say I may be in error; but that is my understanding.

THE COURT: And they have ruled that an automobile so registered was improperly registered.

MR. MASON: It was a Mrs. Wilson involved in that, as I remember. And I think in that case the court said the legal name was Alice Wilson but not Mrs. Alice.

THE COURT: (To Sheriff) Will you get me 256 Mass. and 265 Mass. please.

Q. Where do you live, Mrs. Coe #2?

A. I am now living at 30 Forest Street.

Q. Pardon? A. I am now living at 30 Forest Street.

Q. You have been living at 30 Forest Street since what date?

A. Oh, about the latter part of February, 1943, I believe.

Q. February? A. Latter part.

Q. February 1943. Are you sure about that?

A. I think it is that, Mr. Fusaro—the latter part of 1944, I'm sorry.

(Sheriff hands desired volumes to Court.) (Court locates case mentioned, checkmarks same with pencil and hands volume to Mr. Mason).

MR. MASON: (After reading same) I had the Alice right, but not the other.

THE COURT: I was wrong in saying that they said it was illegally registered. It wasn't. But they have said what a married woman's correct name was. Those are the only two cases I know of. It seems to me there was a later case in 265, but I didn't locate it.

MR. MASON: My only objection, if Your Honor please, was to the repetition of the same question.

THE COURT: I think he had a right to ask the same question. Incidentally, I did not hear what name you did give.

WITNESS: Mrs. D. Eileen Coe.

Q. "D" stands for what? A. Dawn.

Q. Now you have been living at 30 Forest Street since the latter part of February 1944, you say—is that right? A. Yes.

Q. And you moved into 30 Forest Street from what address?

A. #6 Boynton Street.

Q. That was your place of residence prior to going to 30 Forest Street, was it? A. That is correct.

Q. And you had been living at 30 Forest Street for how long a period of time before you moved to 30 Forest Street?

A. From the first of October of 1942 until May of '43. We then lived in Reno until the latter part of July, when we had to return, and from I should say the first week in August, second week in August of '43 until the latter part of February 1944.

THE COURT: See if I understand you correctly. Now from the first of October 1942 until—

WITNESS: May of 1943.

THE COURT: You lived where?

WITNESS: At #6 Boynton Street.

THE COURT: And then from May until July—

WITNESS: The latter part of July, we lived in Nevada.

THE COURT: Yes?

WITNESS: We were called back and went back to #6 Boynton Street on, oh, I think about the middle of August when we returned, of 1943. And we resided there until the latter part of February of 1944.

THE COURT: I'm not sure I understand it now.

WITNESS: From October 1st of 1942 until May of 1943, we lived at #6 Boynton Street. We went to Nevada the middle of May, and we lived in Nevada from then on until the latter part of July of '43.

THE COURT: You went to Nevada in mid-May of 1943?

WITNESS: That is right.

THE COURT: And returned?

WITNESS: About the first week in August. That is, we returned to #6 Boynton Street; and we lived there until the latter part of February of 1944.

Q. That is, the latter part of February 1944. Then was a more pretentious home purchased and you moved into it?

THE COURT: To where?

WITNESS: 30 Forest Street. You could say we bought a more pretentious house, Mr. Fusaro.

Q. Yes, a more pretentious house. Now Mrs. Coe #2, you always lived in Worcester prior to October 1st, 1942, did you? A. Prior to that.

Q. I see. And where was your home located prior to October 1st, 1942? A. With my mother and dad at #8 Jacques Avenue.

Q. And had you known Mr. Coe very long prior to September 19th, 1942? A. I should say about sixteen or eighteen years.

Q. Sixteen or eighteen years? A. That's right.

Q. And how long had you been engaged to marry Mr. Coe prior to September 19th, 1942, the date of your marriage?

MR. PERMAN: Wait a moment. I pray Your Honor's judgment.

THE COURT: Will you state your objection?

MR. PERMAN: Yes, there is objection, Your Honor. As I understand it, the sole ground offered by the petitioner in her attack on the defenses set up by the plea in bar is the absence of a domicile in Nevada. I think,

if Your Honor, please, that the evidence offered by the petitioner ought to be restricted to that issue. The line of inquiry now being opened up is, in my opinion, a line of inquiry that is extremely remote from that issue; opens up a wide avenue of further examination. But the inquiry ought to be limited and confined to the specific ground upon which the petitioner has predicated her attack on the defenses set up by the plea in bar. This has no bearing on that issue of domicile in Nevada.

THE COURT: Well, of course I would limit it strictly to whatever bearing it might have on the domicile in Nevada.

MR. FUSARO: I am offering it for that purpose, Your Honor, and I so state.

MR. PERMAN: It would seem on the face of it, if Your Honor please, that the bearing, if it has any, is extremely remote. This is the petitioner's witness. It strikes me if it has any bearing at all it is one that tends along the lines of an impeachment. That line of inquiry is not open to the petitioner.

THE COURT: To impeach this witness?

MR. PERMAN: Yes.

THE COURT: I don't see how this line of inquiry could impeach this witness.

MR. MASON: It is difficult to see what possible bearing the length of engagement would have on the domicile in Nevada.

MR. PERMAN: If Your Honor please, if Your Honor refers now to the latter provisions of Chapter 208, Section 39, I respectfully submit that any issue involved in that statute has no application and no bearing, on the issue of an acquisition of domicile in Nevada.

THE COURT: Well, I don't know that that is necessarily true. I think the two questions are so closely related that one has a bearing on the other.

MR. PERMAN: That is not my understanding.

MR. FUSARO: Well, I understand Your Honor has ruled that I may have the question?

THE COURT: Yes, you may have the question, not only as relative or as shedding light upon any domicile in Nevada and the purposes for going to Nevada — just a minute. I will allow it for the purpose of showing how long Mr. Coe had in mind marrying this witness.

MR. PERMAN: Exception, if Your Honor please.

Q. What is your answer? A. May I have that question read?

THE COURT: The other reasons are excluded. I will allow it for that purpose only. (Stenographer reads aloud question)

WITNESS: Prior to our marriage? (Stenographer again reads question aloud)

WITNESS: Well, we had no engagement. He did ask me I think about two o'clock in the afternoon of September 19th if I would marry him instead of returning to Worcester.

Q. That is, you say that Mr. Coe said: Before we return back home we ought to get married?

MR. PERMAN: I object to that.

WITNESS: No.

THE COURT: He may have it.

MR. PERMAN: That is certainly leading, if Your Honor please.

THE COURT: He may ask it.

MR. PERMAN: This is not a party to this cause.

MR. FUSARO: This is the wife of the respondent.

MR. PERMAN: She is not a party; this is not an examination of an adverse party.

MR. FUSARO: But a witness who is decidedly interested, and hostile and biased I am sure.

THE COURT: By reason of the relationship of this witness to Mr. Coe, I will permit leading questions.

MR. PERMAN: Your Honor will please note my exception to that ruling.

THE COURT: You don't really mean that?

MR. PERMAN: I really mean that, Your Honor. I don't know, certainly at this stage of the examination there has been no indication of any bias or hostility. I know of no law that permits a party to ask his own witness leading questions, whatever may be the rule in the examination of an adverse party.

THE COURT: Well, Judge Lummas, in *Guiffre v. Carapezza*, 298 Mass., 458 ruled . . . where exceptions had been retained because of the allowance of leading questions . . . that is *Guiffre v. Carapezza* and has been reaffirmed; and *Westland Housing Corporation v. Scott*, 312 Mass., 375; and *Commonwealth v. Sheppard*, 1948 Advance Sheets 633 at 638 and 39.

MR. PERMAN: Of course I think that would be sound law. I have not read those cases, Your Honor. It may be that I am wrong. I think it might be sound law with reference to any particular inquiry that might—in which I think the Supreme Court might properly hold that the particular question might not have been prejudicial even though it might have been leading. But this apparently goes much farther than that. Your Honor has stated a rule to be applied to this witness, allowing leading questions, which I assume will also encompass cross examination of the entire line of inquiry. That I think might well go beyond the decisions of those particular cases which Your Honor has cited.

THE COURT: Well, I will take the responsibility.

Q. You have the question in mind? A. Yes, I have.

Q. What is your answer?

A. I think your question was: Didn't he say let's get married before we return to Worcester?

Q. I will have Miss Quinn read it. (Stenographer reads question)

A. No, he didn't say that.

Q. He didn't say that? A. No.

Q. Well, how is it that you happened to be in Reno, Nevada the very day he got his divorce if you did not intend to marry him?

MR. PERMAN: I object.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I was there for business reasons.

Q. What were the business reasons that brought you there, away out to Reno, Nevada? A. If you remember from the previous trial—

Q. Pardon me. You don't mind answering—or do you?

MR. PERMAN: Wait a minute. I pray Your Honor's judgment.

THE COURT: Well, of course she started to say something about "If you will remember from the previous trial." Of course her answer is for my benefit and not for the benefit of the attorney. I don't remember anything about the previous trial.

MR. PERMAN:

THE COURT: Well, I suppose he might have said: Would you please answer my question.

MR. PERMAN: I wouldn't know.

Q. Do you mind answering my question?

A. I don't. I testified I was working for Mr. Coe, and had been working for him since June of 1939.

MR. FUSARO: I ask that answer be stricken from the record, Your Honor, as not responsive—evasive, and clearly an evasive answer.

THE COURT: Will you read me the question? (Stenographer reads question)

THE COURT: No, it is not responsive, because he isn't asking you now what you testified to. He may later on, but he isn't now. He is asking you now to give your reason for being there, as I remember it.

MR. FUSARO: That's right.

WITNESS: Well, my reason for being in Nevada was because I was working for him and had been working for him.

Q. You say you were working for Mr. Coe, that right?

A. That's right.

Q. I see. And what was your work for Mr. Coe up to the time that you entered the state of Nevada?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: Since 1939 when the corporation was formed I took the Minutes of the meetings, typed all of the waivers of stockholders meetings and so forth for the corporation book on both Tarbox Incorporated and also handled Tarbox Realty, whatever correspondence and secretarial work there was to that. I also handled correspondence to his broker, and then when I went out there I did so because he had authorized me to have one of his pieces of property done over, so to speak, so it could be rented or sold.

Q. So when you entered the state of Nevada you were there on what kind of business? A. As I explained to you, Mr. Coe's business.

Q. Well, I am asking you what work you did in Nevada.

A. I was not working in Nevada.

Q. Oh, you did not work in Nevada? A. No. I went to California.

Q. Oh, you didn't go to Nevada?

A. Not until after Mr. Coe's divorce.

Q. Oh, didn't you go with Mr. Coe directly to Nevada and arrive in Nevada on June 10, 1942? A. Oh, but weren't you speaking—

Q. Pardon me. I am asking you. A. On June 10, I drove out there—

MR. PERMAN: Just a moment. I think it ought to be in order, if Your Honor please, to have counsel in making his inquiries address himself to a particular time, so that the answers may be properly responsive. He has addressed himself to a particular time, then asked further inquiries. I think it is a natural assumption for the witness to assume that they were directed to that time that had been previously referred to, and she ought not to be at the same time re-examined with reference to events at another time. It would tend to less confusion and more rapid progress, I think.

THE COURT: Well, it seems to me that the line of inquiry was directed to any time between June 10, 1942 and September 19, 1942. I so understood it, and I thought the question was clear enough as referring to that time, in the line of inquiry more than the question. Now it is four o'clock.

(HEARING SUSPENDED UNTIL 10 A.M. FEB. 20, 1945)

FEBRUARY 20, 1945 HEARING

MR. FUSARO: Mr. Perman, I ask you to produce the agreement of association of Tarabox Realty Company.

MR. PERMAN: I hand you herewith agreement of Association of Tarbox Realty Company.

MR. FUSARO: Have you the Charter?

MR. PERMAN: I hand you herewith the Charter of the Tarbox Realty corporation.

MR. FUSARO: If Your Honor please, I offer them. The Agreement of Association, if Your Honor please, is the first exhibit.

MR. PERMAN: The respondent objects to the admission of both instruments.

MR. FUSARO: Well, I haven't offered both yet.

MR. PERMAN: You have offered the Agreement of Association?

MR. FUSARO: Yes.

MR. PERMAN: Respondent objects to that.

THE COURT: Will you state your purpose?

MR. FUSARO: Yes. I offer it for the purpose of showing the residence given by the respondent, Mr. Coe, in 1941, having in mind his previous testimony that he was then a resident of New York. And that particular form does not require, as I understand the law, the place where he is living, but his residence or domicile.

MR. MASON: Oh just a moment.

MR. PERMAN: I pray Your Honor's judgment as to that interpretation of the law.

MR. MASON: It is perfectly obvious that a man might have more than one residence. It is axiomatic of the law.

MR. FUSARO: That is Mr. Coe's signature—you don't deny that, of course?

MR. PERMAN: We don't deny his signature.

THE COURT: It may be admitted for the purpose offered.

MR. PERMAN: Exception.

(MARKED EXHIBIT 7)

MR. FUSARO: I return the Charter.

MR. PERMAN: I accept it.

D. EILEEN COE, resuming stand, continued to testify as follows:

Q. BY MR. FUSARO: Mrs. Coe #2, will you please tell us when you first became employed by Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: In June of '39 I assisted in drawing up some papers, but I was not actually employed until about 1940.

Q. Well, is June 19, 1939 the first time that you were asked to assist Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. Just yes or no, please. A. No.

Q. Have you done work for Mr. Coe prior to 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I had.

Q. When was the first time you had done work for Mr. Coe prior to 1939?

MR. PERMAN: Objection. THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS I think I—

Q. When? Just the date, please. A. I am trying to give you that, Mr. Fusaro. In '31, '30 or '31, somewhere in there.

Q. Oh, you had worked for him in '31?

A. No. You asked if I had done some work for him, and not if I had worked for him.

Q. What kind of work did you do?

MR. PERMAN: Objection.

THE COURT: Well, that might be a little removed or a little remote.

Q. At whose request did you assist him in 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I think I offered my services.

Q. To whom? A. To Mr. Coe.

Q. I see. And was it Mr. Coe that gave you orders and directions about this job in 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: When I offered my services in connection with—

Q. Will you please answer my question?

A. Will you repeat that question again. (Stenographer reads aloud question)

WITNESS: Well, that would be a little difficult to answer; that is, if I may answer it in my own way, Mr. Fusaro, I can say that—

Q. Well, was it Mr. Coe that gave you orders and directions with respect to any work that you did in June of 1939? Before—

Q. Yes or no.

MR. PERMAN: Objection.

WITNESS: I can't answer that yes or no.

Q. Was there anybody else that gave you any orders and directions other than Mr. Coe in June 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: They both, well, that is, two people both gave me them.

Q. Who are these two people that gave you orders and directions in June 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Mr. Coe and Mr. Perman dictated.

Q. I see. And this dictation took place where at that time?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: In Worcester.

Q. Where in Worcester?

A. Some of it at the office and some of it at my mother's home.

Q. Whose office do you refer to? A. Mr. Perman's office.

Q. On how many different days in June did you take dictation from either Mr. Perman or Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I don't suppose what she did for Mr. Perman has anything to do with this case.

Q. Well, what dictation did you take from Mr. Coe in June 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I didn't say that I took dictation from Mr. Coe.

Q. I see. Well, did you receive any orders or directions from Mr. Coe in June 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I wish you would clarify that; I'm not clear as to what you mean. I don't understand your question.

Q. Well, didn't you get some orders from Mr. Coe with respect to some work that you were to do? Yes or no.

A. Well, you ask the question in such a confused manner. If you would let me answer it, I offered my services—

Q. What is there confusing about that question?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: If I offered my services in connection with that work and he consents and thanks me for it but doesn't give me any actual dictation in reference to that work, the man doesn't necessarily give me orders.

Q. What I am trying to find out is exactly what Mr. Coe asked you to do.

A. I offered my services in connection with Tarbox Incorporated in typing and in taking dictation of the Minutes of the meeting, transcribing notes and so forth.

Q. And on how many different occasions did you do that in June?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, that is difficult to say, Mr. Fusaro. I don't know.

Q. And you say that Mr. Coe came to your house?

A. That is correct.

Q. Well, let me call your attention to the fact that you testified in March 1942 in this Court, did you not? A. Testified to what?

Q. You were a witness? A. Oh yes.

Q. And you were the correspondent named by Mrs. Coe #1?

MR. PERMAN: Wait a minute.

THE COURT: He may have it.

Q. That is true, is it not?

MR. PERMAN: Wait.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. That is true, is it not? A. I think—

Q. Well, Mrs. Coe #1— A. You were acting as her counsel, were you not?

Q. I ask you the question, it was Mrs. Coe #1 that named you as correspondent?

MR. MASON: Well, she said you did, Mr. Fusaro.

THE COURT: She did not answer the question.

Q. What is your answer? What is your answer, please?

A. Well, I don't know whether Mrs. Coe #1 did it, but you filed the papers.

Q. That's the way you want to leave it?

A. I know that you filed the papers naming me correspondent.

Q. And after June 1939 when did you next do any work for Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I may have typed a couple of letters anyway.

Q. No. I asked you when did you next work for Mr. Coe?

MR. PERMAN: If the witness can remember the exact date when next.

THE COURT: Now wait. He has asked the question, and it is not fair to answer it for her.

MR. PERMAN: Well, I don't think this line of inquiry is fair.

THE COURT: Well I do.

MR. PERMAN: Your Honor will note my exception to this line of inquiry.

THE COURT: You have taken exception to every question and every answer. Do you want a general exception to it?

MR. PERMAN: I think I do.

THE COURT: I don't think you are entitled to it.

Q. You may answer, Mrs. Coe #2. A. Will you repeat that?
(Stenographer reads question aloud.)

WITNESS: I am not clear as to '39, but I know in 1940.

Q. Well, is it your recollection now that after June 1939 and for the balance of that year you did no further work for Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Your question is for the balance of that year I did no work?
Q. Yes.

A. Oh, but I told you I did type a couple of letters, but I'm not clear as to when.

Q. Up to then? A. Yes.

Q. Did you work up to June 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I told you that I couldn't remember just when in '39 I did work.

Q. Did you work in September 1939? A. I can't remember.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Did you work in October 1939? I can't remember October '39.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Did you work in November 1939?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I can't remember just when in 1939.

Q. Did you work in December 1939?

A. I can't remember just when in 1939:

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

MR. PERMAN: And will you wait until I get my objection and exception in, please?

Q. Now in 1940 you assisted Mr. Coe, did you? A. That's right.

Q. When in 1940 did you assist Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: In beginning, in May I believe; no, I am wrong. The latter part of June or the first of July.

Q. 1940? A. That's right.

Q. And you worked how long for him at that time?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I did work for him occasionally.

Q. Pardon me, how long did you? A. I wasn't working—

MR. PERMAN: Just a moment. May the witness be permitted to answer the question?

THE COURT: She wasn't answering the question.

MR. PERMAN: May I have the question and the answer?

THE COURT: Yes. (Stenographer reads aloud question and answer)

MR. PERMAN: I think she ought to be permitted to answer, so that some judgment may be made as to whether or not the answer is or is not responsive to the question.

Q. My question is, how long did you work for him in 1940 at the time you mention?

A. I could answer that if you meant was I on weekly salary; but I was not on weekly salary.

Q. That is, you were not receiving any pay at all? A. Oh yes, I was.

Q. Regardless of the pay you were receiving, will you tell us how long you worked for Mr. Coe at that time?

A. I said I worked for him occasionally.

Q. Well, can't you tell us in 1940 whether you worked a week or two, or a month or two, or three months?

A. Do you mean the accumulation, the accumulated time? I cannot tell you that because I don't know.

Q. As a matter of fact, you were in the hospital in 1940 weren't you?
A. That is true.

Q. And Mr. Coe was visiting you at the hospital?

MR. PERMAN: I pray Your Honor's judgment. I object to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: That is true.

Q. And Mr. Coe was buying clothes for you?

MR. PERMAN: Objection.

WITNESS: Oh no he wasn't.

MR. PERMAN: Wait a minute. Will you allow me to put my exception in before you proceed with the question? I object to the last question.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He did not buy any clothes for me.

Q. Did you testify at the last hearing that he bought clothes for you?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I don't recall that.

Q. If you did so testify, were you telling the fact or not?

MR. PERMAN: Objection.

THE COURT: He may have that. MR. PERMAN: Exception.

WITNESS: He did not buy me any clothes.

Q. I am asking you about the testimony.

A. I don't remember what I testified to.

Q. Didn't you testify, Mrs. Coe #2, that money was furnished for the gowns that you required in the hospital? A. I don't recall that.

THE COURT: Excuse me, Mr. Fusaro, I did not hear that.

Q. Then you testified "That's right," do you recall that?

A. I don't recall.

Q. Do you say now that money was not furnished for clothes?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Mr. Coe furnished money for expenses.

Q. I am asking you do you say now that Mr. Coe—

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He did not buy my clothes and he did not furnish money specifically for my clothes.

Q. Well, did he furnish money indirectly for clothes?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He paid my doctor's bill and—

Q. I didn't ask you that.

A. He gave me the amount to pay my expenses.

Q. I didn't ask you that. A. Will you repeat the question to me?

Q. Yes. (Stenographer reads question aloud)

WITNESS: He furnished money for all expenses.

Q. Will you please answer that question yes or no?

MR. PERMAN: I object.

THE COURT: I think that is an answer. I think that would include, it is more inclusive than the question and therefore answers your question and goes beyond.

Q. And Mr. Coe paid your doctor's bill at the hospital?

A. That's right.

Q. Paid all the medical expenses? A. That's right.

Q. And it is true, is it not, that Mr. Coe furnished you with jewelry?

A. He did not.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. You just answer that question yes or no.

A. Would you be kind enough to tell me when I said—

Q. March 1942 you testified here in the Probate Court.

A. That he had given me a twin bracelet set; it was a Christmas present.

Q. Well, you so testified, did you not?

A. I so testified that he had given me a twin bracelet set for a Christmas present, and I produced it.

Q. That was in 1940? A. That's right.

Q. And it is true, is it not, that Mr. Coe either purchased or gave you money for shoes?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: When are you referring to, Mr. Fusaro?

Q. Any time.

THE COURT: No, he is referring—

WITNESS: To the time I was in the hospital?

THE COURT: Were you asking if she so testified?

MR. FUSARO: With reference to her 1942 testimony.

WITNESS: I testified that he bought me or furnished the money for a pair of special shoes that went in the brace for me.

Q. And he also took you on trips, did he?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Didn't he? A. He did not.

Q. Didn't he take you to Trenton, N. J.?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Is this all limited to the issue of domicile in Nevada?

I would like to know whether we are re-trying the former case or if we are proceeding on the plea in bar which has been set up in this case.

THE COURT: We are not proceeding alone on the plea in bar.

MR. PERMAN: We are not proceeding on the plea in bar?

THE COURT: Alone on the plea in bar.

MR. MASON: Well, I think that ought to be straightened out now.

MR. PERMAN: If Your Honor please, you will recall just yesterday we had stated we were proceeding on the plea in bar.

THE COURT: I remember that.

MR. PERMAN: I think as counsel I ought to know precisely what issue is involved now. I had assumed, and I think my associate assumed we were proceeding on the plea in bar, and we were proceeding with that as a preliminary before proceeding on issues raised for petition for modification and petition for contempt.

THE COURT: Well, it is my understanding that we are proceeding on the whole case.

MR. FUSARO: That's right, Your Honor.

MR. MASON: Well, is Your Honor going to give us opportunity to present the plea in bar as a separate issue before we go into the other issue?

THE COURT: I thought I had given you an opportunity to present the plea in bar.

MR. MASON: Then I think we have a right at some point in these proceedings to call Your Honor's attention by proper motion or other-

wise that we desire Your Honor to act on the plea in bar; and it was our understanding that counsel for the petitioner were given opportunity to meet the evidence that we had presented in connection with that plea in bar. That was my distinct understanding of Your Honor's ruling yesterday, and if that is not so, I think we are being prejudiced at this time.

THE COURT: It was my understanding, as I stated, that we were trying the whole case and that this evidence went to the whole case, to all issues that you raised and to all issues raised by the petitioners.

MR. MASON: As I understand it, Your Honor, the normal course of procedure in trials—perhaps I am in error—on a plea in bar is for the Court to consider evidence on the plea in bar and act on the plea in bar before evidence is offered on any other issues. If the plea in bar were sustained, it would eliminate the necessity and save the time of the court and counsel. Now Your Honor gave us an opportunity to proceed with the plea in bar.

THE COURT: I will settle that by reserving decision on the plea in bar, if you maintain that, and proceed with the rest of the case.

MR. PERMAN: Is all the evidence in on the plea in bar, according to Your Honor's understanding?

THE COURT: I understand that you presented all that you wish to present; that you rested. You so stated yesterday.

MR. PERMAN: Yes, with the specific understanding that that was preliminary to the determination of any other issues here.

MR. MASON: It is hard to understand why we were permitted to go forward in the midst of trial with the plea in bar.

THE COURT: Because you insisted on it, and kept insisting on it, and because you kept on objecting and excepting to every question that went in; and I suspended the trial, as I thought, to eliminate a few, just a few of the objections and exceptions, to see if we could proceed in some sort of orderly manner. I found it very difficult, and still do.

MR. MASON: Well, I am sorry to state that the situation now confuses.

THE COURT: It has been extremely difficult to proceed at all in the case in any manner.

MR. PERMAN: I want to suggest we appreciate that, and it was our sincere effort to introduce into this cause some element of orderly proce-

ture, there being a plea in bar involved which normally and naturally would require adjudication as a preliminary matter.

THE COURT: Well, let me say that I have attempted to proceed in some sort of orderly manner, and I have found it most difficult.

MR. PERMAN: Well I think, if Your Honor please, that we ought here and now to determine just what is being tried.

MR. FUSARO: Well, it has already been determined. May I go on with the evidence?

THE COURT: I stated my position.

MR. PERMAN: Well, if that is a ruling of law in the case, the respondent objects and excepts to it. At this time, Your Honor, under the circumstances I am filing—

MR. FUSARO: Well, if Your Honor please, may I suggest that certainly this is not the time to file any documents.

MR. PERMAN: Wait a minute. May I proceed?

THE COURT: Not necessarily. I would like to know what it is. I will give you that opportunity.

MR. PERMAN: Yes. I was going to proceed to tell Your Honor. I have here two motions; one a motion to strike evidence, testimony of domicile from the record, another motion for the entry or finding sustaining the plea in bar. (Hands papers to Court) I am filing those at this time. These are your copies (handing papers to Mr. Fusaro).

THE COURT: Both of them I treat as requests for rulings, and since requests for rulings have no place in Probate proceedings I refuse to consider them.

MR. PERMAN: The respondent objects and excepts to Your Honor's refusal to pass upon the motion. The respondent further objects to the refusal of Your Honor to allow the motions.

THE COURT: I am not denying them. You don't question the fact that requests for rulings have no place in Probate proceedings, do you?

MR. PERMAN: Those are not before Your Honor as requests for rulings.

THE COURT: I treat them as such.

MR. PERMAN: And the respondent objects and excepts to Your Honor's receiving and treating them as rulings, and furthermore objects and excepts to Your Honor's refusal to pass upon these motions.

THE COURT: As to your plea in bar, it is my duty to rule on it in any event without any written requests or without any motion. They simply have no place in Probate proceedings. I have already stated that I reserve decision upon it.

MR. PERMAN: There is decision reserved upon the plea in bar?

THE COURT: Yes.

MR. PERMAN: Then I can properly assume that all evidence with respect to the plea in bar is before Your Honor?

MR. FUSARO: No, if Your Honor please; I have not rested.

THE COURT: How can it possibly be all before me? You have asked me to rule on it now.

MR. PERMAN: I ask this to clarify my own mind. I assume now there is evidence that has no relation to the plea in bar—it is related to something else, and I don't know what.

MR. FUSARO: Certainly; we have not rested. You have.

MR. MASON: We have not rested.

MR. PERMAN: We have rested solely on the plea in bar, and on nothing else.

MR. MASON: I cannot see any purpose in letting us go ahead, go forward on the plea in bar. We didn't ask that at all. We took the position that there was something before Your Honor. Your Honor took—

THE COURT: Well, that is all in the record, and it took time enough; let's not go into it again. You may proceed, Mr. Fusaro.

(Stenographer reads aloud last question)

Q. What is your answer?

MR. PERMAN: I object to that.

THE COURT: You already objected and I have already ruled on it.

MR. PERMAN: I object to that.

THE COURT: You already objected and I have already ruled on it.

MR. PERMAN: Exception.

Q. What is your answer? A. I don't recall that.

Q. Didn't you testify March 1942 that you went on trips with Mr. Coe to Trenton, N. J.?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I don't recall that.

MR. PERMAN: Wait a minute. The respondent moves that all the

testimony of this witness except her identification, insofar as it relates to any issue of domicile, be stricken from the record.

THE COURT: I have already ruled, Mr. Perman, that she may answer these questions.

MR. PERMAN: Is Your Honor passing upon that motion?

THE COURT: So far as it deserves passing upon.

MR. PERMAN: The respondent objects and excepts to the refusal of Your Honor to pass upon that motion. The respondent moves that all the testimony of this witness, except her identification, be stricken from the record insofar as it pertains or relates to any issue raised by the petitioner on her petitions for contempt and modification.

MR. FUSARO: If Your Honor please, I have not finished with this witness. It seems unusual for counsel in the midst of cross examination to make such motions. It seems to me that Mr. Perman should be required to wait until I have finished cross examination.

THE COURT: I have attempted that, Mr. Fusaro, but I have not been able to secure that result.

Q. What do you say?

MR. PERMAN: Wait a minute.

MR. FUSARO: Pardon me. I don't think you should interrupt my cross examination.

THE COURT: I have already ruled on those questions, Mr. Perman.

MR. PERMAN: Insofar as that is a denial of the motion, the respondent objects and excepts.

Q. Mrs Coe #2, it is true, is it not, that you went on trips with Mr. Coe to Philadelphia?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I believe I did go to Philadelphia.

Q. And it is true, is it not, that you went to New York on trips with Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No.

Q. Didn't you go to New York and see Mr. Coe in New York, going to theaters and dinner with him?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Yes or no.

MR. PERMAN: Wait a minute.

WITNESS: Your question was did I go with him to New York?
(Stenographer reads aloud question)

WITNESS: I believe—

Q. Did you, that is my only question.

A. I think I did twice, Mr. Fusaro.

Q. Now Mrs. Coe #2, can you tell us how long you worked for Mr. Coe in 1940?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I would exclude that, Mr. Fusaro, because you have already gone into it.

MR. FUSARO: Very well, Your Honor.

THE COURT: You asked many questions about it and she gave many answers. Perhaps you forgot about it.

Q. Did you work in 1941 for Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I think on seven or eight occasions, I think it was.

Q. Covering a period of what time? A week or two?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Oh no. Covering from the first, Oh, about the first week in January of 1941 until, well, you asked for the year 1941. I am sorry.

Q. Well, from January 1st, 1941, until when?

A. Well, for that year?

Q. For the whole year. A. On seven or eight occasions.

Q. How much of that time in 1941 did you work for Mr. Coe?

A. Well, it might have been twenty hours work.

Q. I see; twenty hours work. Well, in 1942 you say you went to Nevada on some business with Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: 19?

MR. FUSARO: 1942.

THE COURT: She may answer.

MR. PERMAN: Exception.

WITNESS: I think I am a little confused as to just when you meant. Whether you meant whether I went out June 10 or whether I went out again the latter part of August.

Q. Well, when you went to Nevada and arrived in Nevada on June 10, did you go on business? A. I think you might call it that, yes.

Q. And what business was it that you went to Nevada on, on June 10?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: To assist Mr. Coe in driving out there, at the request of Dr. Josephson, and I assisted in the driving; and when I got out there at that time it was difficult for Mr. Coe to converse with people, that is, he conversed with them but it was difficult for him to really understand exactly what they meant, and he asked me if I would go out with him and if mother and I would help him get settled out there, find a place, aid him in fixing it up, and he also wanted me to go and act as an intermediary between Mr. Coe and Mr. Bible.

Q. I see; sort of an interpreter? A. I didn't say that, Mr. Fusaro.

Q. Well, you had been engaged when by Mr. Coe for this particular job that you have described?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: May I have that question? (Stenographer reads same)

THE COURT: He may answer.

MR. PERMAN: Exception.

WITNESS: You refer to my driving out June 10th?

Q. What you have described, yes.

A. About three days before he left New York.

Q. Oh, so you were in New York with Mr. Coe?

A. No, I wasn't, Mr. Fusaro.

Q. Did you see Mr. Coe in New York? A. I did.

Q. I see. And when did you see Mr. Coe in New York prior to the Nevada trip?

MR. PERMAN: I object to that.

THE COURT: She may answer.

MR. PERMAN: Exception.

WITNESS: Mother and I went down and stayed at the apartment prior to—

Q. I asked you when did you see Mr. Coe? A. I am telling you.

Q. And you may answer by giving the date, please.

A. I can't give it to you exactly; it was the latter part of May.

Q. Latter part of May 1942? A. Yes.

Q. And was that a chance meeting in New York, or was it that Mr. Coe had requested your arrival in New York?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. His Honor said you may answer, Mrs. Coe.

A. Yes; he requested my arrival you said? He did not request that I go down to New York.

Q. He didn't? A. No. I talked to him by phone.

Q. It wasn't by chance? A. No.

Q. You talked to him by telephone? A. Yes.

Q. He called you by telephone? A. Yes.

Q. He talked with you at your home? A. That's right.

Q. Did he ask you to go to New York?

A. Mr. Coe and my mother had had many talks about the west and he was aware of the fact mother would never condone my going out there without being chaperoned; so he talked with mother and asked if I could go, if she would go if it was all right for me to drive him out. Mother said at the time she didn't know; she didn't know whether she could get away and leave dad. She said finally—he coaxed her, I guess, and she said finally she would go under the agreement she would pay her own expenses. So mother and Mr. Coe actually made the arrangements in that sense. I myself wanted to go and asked mother if she would go.

Q. You think that is a proper answer to my question?

A. That is the only way I can explain. I'm sorry, Mr. Fusaro, if it was not correct.

MR. FUSARO: Well, Your Honor, I have had experience with this witness before, and I am sure she will not give responsive answers unless the Court requires her to do so.

MR. PERMAN: I move the statement of counsel be stricken, especially "I have had experience with this witness before." That is the second time he has used that phrase in connection with his interrogation.

THE COURT: It is not part of the evidence in any event.

MR. PERMAN: I think it is improper comment and ought to be stricken from the record.

MR. FUSARO: It is true I have had experience with this witness before.

THE COURT: It is no part of the evidence, so I will not strike it from the record.

(Stenographer reads aloud question and answer)

MR. MASON: I think that answer is entirely responsive.

MR. MCKEON: I think it is not responsive, but I would like it to stand.

MR. FUSARO: All right; we withdraw the request, Your Honor.

Q. Now Mrs. Coe #2, from your relations with Mr. Coe up to March 1942, was it true that you were keeping company with him?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, that might be a question of interpretation.

MR. FUSARO: Very well, Your Honor; I will withdraw it. Probably it is not a well put question.

Q. Well, in October of 1941 you were aware that Mrs. Coe #1 was accusing you of adultery with Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer.

MR. PERMAN: Exception.

WITNESS: I was not aware of that, Mr. Fusaro.

Q. And didn't you so testify that Mrs. Coe #1 had accused you at 5 Boynton Street in October of 1941 of having committed adultery with Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer.

MR. PERMAN: Exception.

Q. Yes or no. A. Will you repeat that question, Miss Quinn?

(Stenographer reads aloud question)

MR. MASON: This is addressed—

MR. FUSARO: Pardon me.

MR. MASON: I have a right to address the Court.

MR. FUSARO: I am sure you do so for a purpose.

MR. MASON: If I am out of order I assume the Court will tell me. I think counsel for the respondent have a right to know whether a certain line of inquiry is directed to some relevant issue in the case. This line of inquiry appears to me to have no bearing on any issue in the case, the last question particularly. What difference does it make what Mrs. Coe #1 charges her with, as to any bearing on this case.

THE COURT: She was asked if she knew it.

MR. MASON: What difference does it make what Mrs. Coe #1 thought?

THE COURT: Well, it is cross examination. The other day I gave a very long opinion of what I considered relevant, what evidence I considered relevant on the question of Mr. Coe's intention in going to Nevada, and I think that all this evidence relates to the same thing. I take it that it is offered for the same purpose. I don't think it is necessary to repeat that long ruling.

MR. MASON: No, I don't think so, Your Honor. But my specific comment at the moment is that on the question of Mr. Coe's intent in going to Nevada is it pertinent to know what this woman knows about Mrs. Coe #1 making some charges? Is that material?

THE COURT: It all pertains to her relations with him and his relationship with her. Her conduct might throw light upon his intention.

Q. What is your answer?

THE COURT: That is, her conduct with him. If it pertained to her conduct with someone else, of course it would have nothing to do with this case whatsoever. All the line of inquiry pertains to the witness's conduct with Mr. Coe.

MR. MASON: The last question was whether she knew that the first Mrs. Coe had charged her with adultery. This woman is not on trial in this case, and the obvious purpose—

MR. McKEON: Pardon me. You made the same objection 50 times.

THE COURT: Let's have this as orderly as it is possible to have it, at least.

MR. MASON: It is very obvious what this line of inquiry is designed to do. It is not designed to meet any issue in this case, and it must be obvious to Your Honor by this time.

Q. Mrs. Coe, what is your answer?

A. Yes, and I asked if Miss Quinn would repeat it to me. Repeat the question.

MR. PERMAN: May the record note the respondent's exception to the allowance of that question. (Stenographer reads question aloud)

WITNESS: I did not testify to that, and you know it.

Q. You are pretty sure about that? A. Yes, I am sure of it.

Q. Now Mrs. Coe #2, in October of 1941 were you at 6 Boynton Street? A. I was at 6 Boynton Street.

MR. PERMAN: Wait a minute. I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

Q. And you were alone with Mr. Coe, were you not?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I was.

Q. And sometime during the evening Mrs. Coe #1 entered the house?

MR. PERMAN: Objection.

WITNESS: Accompanied by—

THE COURT: She may answer.

MR. PERMAN: Exception.

WITNESS: Yes.

Q. And you were found upstairs? A. I was not.

MR. PERMAN: Wait a minute.

Q. And isn't it true that Mrs. Coe #1 said to you, "You are the vul-
ture that I thought you were. You have committed adultery." You laugh
at that, do you? A. Yes.

MR. PERMAN: I pray Your Honor's judgment.

MR. MASON: Is there or isn't there a limit to this?

WITNESS: The accusations you are making are atrocious.

Q. That is what you said, isn't it?

A. No, I did not, and you know it. You are trying to put words in
my mouth.

MR. PERMAN: Will you wait until objection has been taken and
ruled upon?

THE COURT: He may have it.

MR. PERMAN: Exception. And in addition to other objections, if
Your Honor please—

MR. FUSARO: Well, His Honor has ruled on it and I would like to
proceed.

MR. PERMAN: I would like the record to note that we particularly
object to this line of inquiry insofar as it is in violation of the statutes
of this Commonwealth, tending to impeach a witness that is called by
the petitioner.

Q. Mrs. Coe #2—

THE COURT: Just a minute. I think there is something to that.

MR. FUSARO: Your Honor, I am prepared to impeach this witness, and I am going to call to her attention—

THE COURT: Just a minute. Will you get me Volume 8?

(Sheriff procures and hands to Court Volume 8)

THE COURT: (Reading aloud from Vol. 8) "The party who produces a witness shall not impeach his credibility by evidence of bad character but he may contradict him by other evidence and may also prove that he has made at other times statements inconsistent with his present testimony. But before such proof of such inconsistent statements is given the circumstances thereof sufficient to designate the particular occasions shall be mentioned to the witness and he shall be asked if he has made such statements, and if so, shall be allowed to explain them."

MR. PERMAN: That is precisely the statute I had in mind through a lot of this inquiry.

MR. FUSARO: It is exactly what I am doing.

THE COURT: But as I see it, that is exactly what he is doing; exactly what the statute permits.

MR. PERMAN: I do not so interpret this inquiry here as conforming to the statutory provision, certainly.

THE COURT: "But he may contradict him by other evidence and may also prove that he has made at other times statements inconsistent with his present testimony; but before such proof of such inconsistent statements is given the circumstances thereof sufficient to designate the particular occasion shall be mentioned to the witness." He has done that in each instance.

MR. PERMAN: Precisely, there are two grounds. One is other evidence; and the other is prior inconsistent statements. And I respectfully submit the question "Weren't you up in a room alone" is not within the exception as defined by that statute. It is an impeachment without conforming to the statute, and an inquiry there—I am merely taking one instance—

THE COURT: Didn't he also call the witness's attention to testimony at the previous trial?

Q. Do you recall, Mrs. Coe #2, that you testified on two days, March 23, 1942 and March 24, 1942, in this very Court? A. That's right.

Q. And do you recall in answer to a question by Mr. Perman at that

time that you related an incident when you were at 6 Boynton Street with Mr. Coe and that while you were there Mrs. Coe came in; and you said: "Mrs. Coe walked over to where I was sitting and asked me if I knew what I reminded her of. I made no reply. She said 'A vulture,' that I was running true to form. She accused me of being 'promiscuous'; she accused me of adultery." And that from your own lips.

A. I said she accused me of being promiscuous.

Q. Do you say you never said at a previous time that Mrs. Coe #1 accused you of adultery?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I don't recall saying adultery. I said promiscuous.

Q. I call your attention to March 24th, 1942, when I was cross-examining you and asked you about the incident that occurred on October 19th, 1941, and here is what you said: "She stood on the doorway," meaning Mrs. Coe #1, "and looked at me; walked over towards me where I was sitting and asked me if I knew what I reminded her of. I looked up at her. She said, 'A vulture.' She said, 'You are running true to form.' Then she walked back; she stood in the doorway, and at the time she accused me of being promiscuous, she accused Mr. Coe of adultery." You used it again the very next day.

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I said promiscuous. But why don't you ask for the whole incident? Why pick out parts because the rest is detrimental to yourself.

MR. FUSARO: I ask that be stricken out.

THE COURT: It may.

Q. Did you say she accused you of adultery?

A. I say I was not accused of adultery and I do not recall her saying it to me.

Q. All right. Now Mrs. Coe #2, you realize that the answers you are giving today are under oath? A. I do.

Q. I see. And didn't you further testify at the hearing March 23, March 24; that in view of her accusations you had broken off relations, whatever they might have been, with Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I don't see that that is in contradiction to anything she has testified to here.

MR. FUSARO: Very well, Your Honor.

Q. Well, you said you were employed by Mr. Coe when you went to Nevada, that right?

A. "Employed" would mean I got a salary, wouldn't it? I did not receive a salary.

Q. You did not receive any salary? A. No.

Q. Mr. Coe paid all your expenses? A. That's right.

Q. Well, did you stop working for him or not?

A. You mean June 10? .

Q. Yes.

MR. PERMAN: I object to that.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I performed services for him over a period of, Oh, about two weeks going out there, and then of course while I was back home.

Q. Well, had you ever stopped working for Mr. Coe from 1939 until you went to Nevada?

MR. PERMAN: Objection.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I think I told you that after that I only worked for him on occasions when he asked me to type a letter for him.

Q. Did you ever stop working for Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. PERMAN: Exception.

WITNESS: I stopped being on salary.

Q. When did you stop being on salary?

MR. PERMAN: Objection.

THE COURT: She may answer.

MR. PERMAN: Exception.

WITNESS: Just as soon as I was able to get around after my leg was broken.

Q. Would you mind telling us when? A. I told you when.

Q. When was it? When was that?

A. I don't remember the exact date.

Q. What year was it? A. In 1940.

Q. In 1940 you stopped work?

A. He didn't continue the weekly salary.

Q. After 1940 were you on his payroll?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, unless she kept the books she might not know whether she was on the payroll or not. She might know how much she received.

Q. In 1940 did you receive any money for the services you rendered Mr. Coe?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: Each and every time I would do any typing up.

Q. And that was true in '41 and '42?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I think on eight occasions.

Q. During those years? A. That's right.

Q. But you testified at the previous hearing on March 24 that you stopped doing any work for Mr. Coe because you had been informed by Mr. Perman that you were named as the correspondent?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. What is your answer? A. I don't recall saying that.

Q. You don't recall? A. I don't recall.

(RECESS. HEARING RESUMED)

Q. Didn't you say at the previous hearing in this case on March 24, 1942 that you stopped your business relations with Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I'm not sure, Mr. Fusaro; I don't recall that.

Q. You don't recall it? A. I'm sorry.

Q. That is, you kept them up all the time, did you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well now, you see the trouble with that is your previous question refers to her testimony; now you are referring to what happened. That is a different thing. Witnesses have great difficulty in keeping the two distinct in any event.

MR. FUSARO: I am sorry; I will rephrase it.

Q. Did you continue your business relations with Mr. Coe right up until June 10, 1942, which is the day you went to Nevada?

MR. PERMAN: Objection.

Q. From 1939 up to 1942?

MR. PERMAN: Objection.

THE COURT: Well, that would be sort of a recapitulation because you went over 1940 and you went over 1941.

MR. FUSARO: Very well.

THE COURT: If you think you haven't covered 1942; you may ask the same question. But you have covered a part of 1942. But if there is any question you want particularly pertaining to 1942 you may have it.

Q. Was Mr. Coe a frequent visitor at your home from 1939 up to June 10, 1942?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He did.

Q. And you were fond of him were you not?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I don't think her sentiment would shed light upon Mr. Coe's intent.

MR. FUSARO: Very well.

THE COURT: Her actions; but her inner sentiments might not.

MR. FUSARO: Very well, Your Honor.

Q. Mr. Coe had dinner at your home between that period of time, June 1939 and June 1942?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He did.

Q. And he had Thanksgiving and Christmas dinner?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I don't remember.

Q. Did you say so at the last hearing?

A. I don't recall. I said that he had dinner at my mother's home.

Q. But I am talking about Christmas and Thanksgiving dinner.

A. Of what year?

Q. Of any year between 1939 and 1942. A. I can't remember.

Q. And do you say that all those were in connection with some business transaction or affair you had with Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: All those? What do you mean?

Q. The dinners, the social calls, these trips.

A. Well, every time in the last eighteen years that he would come to dinner it hasn't been on business. He has always dropped in on mamma and had dinner whenever he was in Worcester.

Q. And when you say you were given any work to do, was it at your home he gave you the work?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Within what period of time?

Q. Between 1939 and 1942.

A. On the eight occasions, seven or eight occasions I believe it was at my home.

Q. And you also went out riding in that \$35,000 yacht of Mr. Coe's, didn't you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, you may have it if she went out riding in a yacht; you may ask her. MR. PERMAN: Exception.

Q. Did you go out riding in that yacht with Mr. Coe? A. I did not.

Q. Were you ever on his yacht? A. Yes.

MR. PERMAN: My objection and exception to that.

Q. You were? A. Yes.

Q. Did you ride in that yacht? A. No.

Q. You never were on the yacht?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I said I was on the yacht but I had never ridden on it.

Q. That is, you did not take a cruise on that yacht? A. I did not.

Q. But you testified at the previous hearing that you had?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I don't recall testifying as to that, Mr. Fusaro.

Q. You don't recall that at all. And it is true, is it not, that when Mr. Coe went out of the city of Worcester during those years between June 1939 and June 1942, he would call you on the phone?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: May I have that read. (Stenographer reads same)

THE COURT: He may have it. MR. PERMAN: Exception.

Q. His Honor said you may answer.

A. On a few occasions I believe he did.

Q. Yes, and do you say, Mrs. Coe #2 that you went to New York and you had dinner with Mr. Coe and you went to the theater with Mr. Coe because you were advised by Dr. Josephson?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I wouldn't say that Dr. Josephson advised me to go to the show or go to dinner with Mr. Coe.

Q. Do you say you went to New York so you could be treated by Dr. Josephson, who was the very same doctor treating Mr. Coe?

A. That's right.

Q. And that is how you happened to be with Mr. Coe in New York, is that right?

A. That is how I happened to see Dr. Josephson in New York.

Q. Is that how you happened to see Mr. Coe in New York, when you went to obtain treatment from Dr. Josephson in New York?

A. Mr. Coe was there at the office, yes.

Q. So then you say that in 1942, prior to the Nevada trip, it was Dr. Josephson that advised a companion for Mr. Coe?

MR. PERMAN: I pray Your Honor's judgment. Now there is absolutely nothing in the record to warrant that being put into that form by way of question.

THE COURT: You may have the question if you leave out "companion."

MR. PERMAN: Exception.

THE COURT: She stated, as I remember, that Dr. Josephson advised her going to Nevada with Mr. Coe to assist him in driving the car and the other things.

MR. PERMAN: I think Your Honor is right. I don't know about "the other things," but certainly there was no testimony with reference to this specific question.

THE COURT: Whether with the status of a companion or not, is, I suppose, a question of the inference that may or may not be drawn from it.

MR. PERMAN: It is by reason of that inference that I make the objection, amongst other objections.

Q. I ask you this question: Was it on the advice of Dr. Josephson that you accompanied Mr. Coe to Nevada in June 1942?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: It was at the advice of Dr. Josephson that I assisted in driving to Nevada.

Q. So you had been called on the telephone by Dr. Josephson, had you? A. I had talk with him—

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I had talk with him by phone, yes.

Q. Yes; so you went to New York not because Mr. Coe had telephoned you to come, but because Dr. Josephson had advised it, that right?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I went to New York on what occasion are you referring to?

Q. This occasion immediately prior to your starting out for Nevada.

A. I thought I told you that Mr. Coe conversed with my mother.

Q. Will you please answer the question?

A. Dr. Josephson didn't call me to come to New York on that occasion.

THE COURT: I think that is an answer, as I remember the question.

MR. FUSARO: Very well, Your Honor.

Q. So that it was by reason of a telephone conversation that you went to New York—you say you didn't have it with Mr. Coe and you didn't have it with Dr. Josephson?

A. I said at that time I did not have it with Dr. Josephson.

Q. Did you have telephone conversation at any time prior to your going to New York? A. With Dr. Josephson?

Q. Yes. A. Yes.

Q. When was that?

A. Probably a week and a half before Mr. Coe left New York.

Q. That would be about May 20 of 1942? A. The latter week, I think.

THE COURT: Week and a half before what?

WITNESS: Mr. Coe left New York. I think we left around the last of June, around the 31st of May rather, I'm sorry.

Q. Well, between March 25, 1942 up to the day that you left for New York the latter part of May 1942, had you seen Mr. Coe?

A. I told you I had seen him before he left—

Q. How long had you seen him during that period?

A. Mother and I stayed at the apartment for the two days before we left for Nevada.

Q. You stayed at what apartment? A. Mr. Coe's apartment.

Q. You previously said this morning that you did not stay at the apartment, didn't you? A. I don't recall saying that.

Q. Don't you recall before recess this morning I asked if you had ever been in that apartment of Mr. Coe's in New York and you said no? Didn't you say that? A. I don't recall.

Q. You don't recall it?

A. No. But I wasn't there until the last two days.

Q. I ask you if you made that statement were you telling the fact or not?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I don't recall saying it; but the truth is the last two days before Mr. Coe left for Nevada I was at the apartment with my mother.

Q. When you stated this morning that you were not at Mr. Coe's apartment in New York, that was not true?

A. You didn't say as to when.

MR. PERMAN: I object to that.

THE COURT: Just a minute. She has stated that she did not recall saying that, but if she did say it, it was not the fact; that the fact is that she did stay at the apartment.

MR. FUSARO: I think Your Honor is correct about it. In view of that I shall not press this last question.

THE COURT: I think that answers it.

MR. FUSARO: Yes, Your Honor.

Q. When you left for Nevada of course you knew that Mr. Coe was going to get a divorce?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I'm not capable of mental telepathy and I did not know Mr. Coe's thoughts.

Q. You did not know that Mr. Coe was going to Nevada to obtain a divorce and then marry you?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I did not.

MR. PERMAN: Wait a minute. Will you wait until my objection is ruled upon, if you don't mind?

THE COURT: You may have it in very nearly that form.

MR. FUSARO: Yes, Your Honor.

THE COURT: You may have this: "You did not know that Mr. Coe intended to go to Nevada to secure a divorce to marry you," if that is what—

MR. FUSARO: Yes, that's the question I intended.

MR. PERMAN: Objection.

Q. I ask you, Mrs. Coe #2, did you know that Mr. Coe intended to go to Nevada to obtain a divorce in order to marry you?

MR. PERMAN: Objection.

THE COURT: She has answered and it may stand.

MR. PERMAN: Exception.

Q. Well, when did you know that Mr. Coe intended to get a divorce?

MR. PERMAN: Objection.

THE COURT: She may answer.

WITNESS: I believe when we talked with Mr. Bible I learned he intended to get a divorce.

Q. When was that? A. June 11th or 12th of 1942.

Q. Well, you knew then that Mr. Coe intended to get a divorce in order to marry you?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: That is not true.

Q. But it is true that Mr. Coe did get a divorce and it is true that Mr. Coe married you? A. He didn't get a divorce—

MR. PERMAN: Wait.

MR. FUSARO: Let me change it; I withdraw it.

Q. It is true that a divorce was granted and it is true that he married you?

A. It is true that Mrs. Coe got the divorce for a settlement because she wanted the money and that was her only way to get it—she tried to get it before. And then he asked me to marry him, and he married me two hours before we were coming back to Worcester.

Q. And you say you didn't know— A. No, I did not know.

Q. Well, you have an answer before I even ask the question.

A. Well, the questions you ask can be answered before, you have gone over them so many times.

Q. Oh, I see. Well, Mrs. Coe #2, you knew on June 11th or June 12th of 1942 that Mr. Coe had filed or was making application for a divorce?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I couldn't very well know that when they didn't file until some weeks later when I was back in Worcester.

Q. And you knew at that time that his intention of getting free from Mrs. Coe #1 were being made good in order that he could marry you?

A. I did not.

Q. You went to Nevada for the purpose of marrying him immediately upon the divorce being granted? A. I did not.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have both questions and both answers.

MR. PERMAN: Exception.

Q. You assisted in the information that was given to Mr. Alan Bible with respect to the divorce proceedings that were contemplated by Mr. Coe?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

THE COURT: She already testified that she had, and that she went there for that purpose.

MR. PERMAN: Will Your Honor please note the form of the question.

THE COURT: She testified that she went there to act as an intermediary.

MR. PERMAN: That is right.

MR. FUSARO: And to assist Mr. Coe.

MR. MASON: She did not say that was the sole purpose, however.

Q. What is your answer? A. May I have that question re-read?

Q. Surely. (Stenographer reads aloud question)

MR. PERMAN: I object to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I cannot say yes to that, because that is not what I did.

Q. Well, you were there while this conference with Mr. Bible is going on?

A. Yes, and would you like me to tell you what the conversation was?

Q. You don't mind if I ask you questions, do you?

A. Not at all, Mr. Fusaro.

Q. Did you give Mr. Bible any information with respect to the contemplated divorce proceedings that Mr. Coe intended to bring in Nevada?

MR. PERMAN: I object to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Not with respect to divorce proceedings, no.

Q. Did you assist Mr. Coe in giving Mr. Bible all the information that was required by Mr. Bible and Mr. Coe with respect to divorce proceedings?

MR. PERMAN: I object.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Not all the information.

Q. But some, did you?

A. Some, but not in respect to the divorce.

Q. My question is in respect to the divorce proceedings? A. No.

Q. You did not take part in that at all; you just listened, that right?

A. I, well, let me put it this way: If Mr. Bible asked a question and it was not thoroughly understood by Mr. Coe, I explained it to Mr. Coe so that he would. But it had nothing to do with the divorce proceedings; it had to do with something else.

Q. Well, I am talking about the divorce proceedings. Did Mr. Coe understand everything that Mr. Bible inquired about?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

THE COURT: She would know because she said she went there for the purpose of acting as intermediary and for the purpose of explaining to Mr. Coe when he did not understand Mr. Bible.

MR. PERMAN: She is now being asked whether somebody else understood what was said to them. Now I don't know as there is any particular competency on her part so far as that—

THE COURT: If she were just a casual spectator that would be so; but she said she went there for the purpose of assisting him and acting as intermediary, and for the purpose of explaining to him when he did not understand.

MR. PERMAN: That still wouldn't confirm that competency.

THE COURT: I think it would.

MR. PERMAN: I will reserve my rights with reference to that.

Q. After the conference where did you go?

A. I returned to Worcester with my mother.

Q. Right away? A. That's right; on June 12th.

Q. Well, you knew that Mr. Coe was going to see a lawyer in Nevada about his intended divorce?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I should think you would ask me whether or not we went in to see a lawyer, and I have told you that on June 11—

Q. Pardon me. Do you mind answering this last question?

A. I cannot know Mr. Coe's mind; I know what he did, but I don't know what he intends to do. Do I?

Q. Now listen to the question, Mrs. Coe #2. A. Gladly.

(Stenographer reads aloud question)

MR. PERMAN: Objection to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I knew that when we went to a lawyer, yes.

Q. And that is the way you want to leave it? What is your answer?

A. What were you going to say? I'm sorry I interrupted you.

Q. Is that the way you want to leave it?

A. That is the only answer to it.

Q. Do you want to say to this court you left Worcester and travelled away out to Nevada and never knew you were going to Nevada so Mr. Coe could make application for a divorce? A. We weren't going just for that.

MR. PERMAN: Wait a minute. May I at least interpose an objection here? I object to the first question.

THE COURT: The question may be reworded. As I remember it, it seeks her intention, which might not be material.

MR. FUSARO: That is true, Your Honor.

THE COURT: But if you inquire as to her knowledge of Mr. Coe's intention, then you may have it.

MR. FUSARO: Yes, Your Honor.

Q. Mrs. Coe #2, it is true, is it not, that you asked Mr. Coe why he was going to Nevada? A. I did not.

Q. You mean that you simply drove him to Nevada without knowing what he was going to do in Nevada?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I think I will change that. I think if they had a joint purpose in going to Nevada, that is, that the purpose of both of them was that, if the purpose of both of them was that they went to Nevada so that Mr. Coe could secure a divorce from his first wife and marry Mrs. Coe #2, you may have her intent, that is, if it is such; if that was the intent of both of them.

MR. PERMAN: The respondent objects and excepts to that ruling, if Your Honor please.

Q. Now Mrs. Coe #2, did you return on June 12 from Nevada to Worcester? A. That is right.

Q. And when you left on June 12, 1942, was there some arrangement between you and Mr. Coe that you would return? A. There was not.

Q. And did you return? A. I did.

Q. Did you return of your own volition? A. Yes.

Q. Without Mr. Coe knowing it?


MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If that includes any communication of her thought to him you may have it.

MR. FUSARO: Yes, Your Honor. MR. PERMAN: Exception.

Q. Did Mr. Coe know that you were returning?

A. He knew when I arrived.



Q. Did he know that you were returning?

A. He didn't know that I was going back. He knew when I arrived. He was in the hospital.

Q. What hospital? A. In Reno.

Q. He was? A. Yes.

Q. That is, when you left Nevada didn't you have some arrangement with Mr. Coe where you would come back to your home in Massachusetts and then return to Nevada? A. No.

Q. You just left him? A. That's right.

Q. I didn't hear. Do you mind answering louder?

A. Well, "You just left him."

Q. Well, didn't you say you were coming back to Worcester?

A. I came back.

Q. Didn't you tell Mr. Coe you would return? A. I did not.

Q. You did not? A. No.

Q. Did you communicate with him in some form that you would return? A. No.

Q. Did you telephone him? A. No.

Q. Did you write him?

A. No. I wrote, wait; I did write, but not that I would return.

Q. You wrote a letter to him? A. I did.

Q. When did you write the letter?

A. I can't remember the exact date.

Q. What month was it?

A. Must have been sometime between the middle of June and last of August, or sometime in that period. I wrote two or three letters; I can't remember the exact date.

Q. Those were just business letters?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: That is correct.

Q. And did you receive replies? A. To one of them.

Q. You received a reply from Mr. Coe? A. That is right.

Q. I ask you now to produce it.

A. I don't save my evidence, Mr. Fusaro.

Q. Oh, I see. Well, you returned to Nevada? A. That is right.

Q. And you returned unknown to Mr. Coe? A. That is right.

Q. You returned to Nevada because you knew that a divorce would be granted soon and you wanted to be there on the spot and marry this man? A. I did not.

MR. PERMAN: Wait. I object.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. That you say is not true? A. That's right.

Q. When did you leave Worcester for your return trip to Nevada?

A. Latter part of August.

Q. Do you recall how you got to Nevada?

A. I went by train. I didn't walk.

Q. Alone, were you? Pardon me—what was that remark?

A. I said I went by train; I didn't walk.

Q. And did you go alone? A. Yes, I went alone.

Q. And you arrived in Nevada on what day?

A. It was the last part of August.

Q. Do you remember the date?

A. I don't remember the exact date, no.

Q. Where did you stay in Nevada? A. I didn't stay in Nevada.

Q. Oh, you didn't? A. No.

Q. Where did you go? A. To Lake Tahoe in California.

Q. Now Mrs. Coe #2, you were in Lake Tahoe, California, on July 18, 1942 and Mr. Coe saw you on that day? A. No, he did not.

Q. He didn't? Were you here when Mr. Coe testified?

A. I was also here when he corrected it.

Q. I didn't ask you that, did I? But it was not corrected until the next day, was it?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, I think you have more than one question there; and she has not answered.

MR. FUSARO: All right.

Q. You were present while Mr. Coe testified? A. That is right.

Q. And weren't arrangements made for you to go to Lake Tahoe, California? A. There were.

Q. Were they made by Mr. Coe? A. They were not.

Q. Were they made by Mr. Bible?

A. He assisted me, yes; but he didn't make all the arrangements.

Q. So you had your arrangements with Mr. Coe's counsel?

A. I asked him where I could stay, where would be a pleasant place, and he told me.

Q. When did you have this talk with Mr. Bible?

A. The latter part of August when I arrived.

Q. Didn't you see Mr. Coe that day?

A. I told you he was at the hospital.

Q. I didn't ask you that; did you see Mr. Coe?

A. I didn't go to the hospital.

Q. Did you see Mr. Coe when you arrived in August 1942?

A. Not when I arrived there, no. Not the night or the afternoon that I arrived there.

Q. Well when did you see him?

A. I went over to the hospital, naturally.

Q. When? A. It was after I had settled at Lake Tahoe.

Q. And you saw Mr. Coe when?

A. I don't know whether the next day or day after I arrived.

Q. And you went to the hospital? A. That's right.

Q. What hospital?

A. I believe it is St. Mary's. I think that is the name of it; I'm not positive of the name. St. Mary's. It's the only hospital, I believe, in Reno.

Q. How often did you visit Mr. Coe from the time you arrived in August? A. That once.

Q. Just that once?

A. Yes, because he left the hospital shortly after that.

Q. When did he leave the hospital?

A. It was right after the first of September.

Q. Well, you say that from the time you arrived in Nevada in August, the latter part of August 1942, up to September 19th, 1942, you had only seen him once?

A. I said only once in Reno. You asked me if in Nevada, and I told you.

Q. You did see him, didn't you? A. Not in Nevada.

Q. But you saw Mr. Coe?

A. That's right, accompanied by Mr. Bible.

Q. Where did you see Mr. Coe after this first visit?

A. They drove out to Lake Tahoe twice and dinner with me.

Q. When were those occasions?

A. Sometime between the first of September and the second week in September, Mr. Fusaro.

Q. The last time you saw Mr. Coe and Mr. Bible was how long before September 19th, 1942? A. About a week, I think.

Q. About a week? A. Yes.

Q. You knew then that a divorce was to be granted very soon?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I couldn't tell what the Judge was going to do, could I?

THE COURT: Well, I guess she has answered it.

Q. Was there information given to you by Mr. Coe with respect to his divorce proceedings?

MR. PERMAN: I object to that.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: Well, yes.

Q. Yes. You knew that Mr. Coe had filed a petition for divorce?

A. That's right.

Q. You knew the grounds for the divorce? A. That's right.

Q. And you knew that that petition for divorce was to be heard on September 19th? A. No, I didn't know then.

Q. On what day was it to be heard?

A. I didn't know when they talked with me.

Q. How soon was it to be heard? A. They didn't know themselves.

Q. Yet this was about the middle of September— A. I said—

Q. Let me finish. The last time you saw Mr. Coe was about the middle of September?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

WITNESS: Not about the middle, no. The middle would be the 15th. Mrs. Coe got her divorce on the 19th. I said I had seen them approximately about a week prior.

Q. Two weeks?

A. Not two weeks, Mr. Fusaro. Possibly a week; might have been eight days or nine days, or ten days.

Q. Prior to the 19th? A. That's right.

Q. What arrangements were made between you and Mr. Coe and Mr. Bible about returning to Nevada the last time that you saw them?

MR. PERMAN: Objection.

THE COURT: He may have it.

WITNESS: He made no arrangements for my returning to Nevada.

Q. You didn't know you were going back to Nevada on the 19th when the divorce was to be granted and you were to be married?

A. No, I didn't know that.

Q. Well, why did you to Lake Tahoe?

A. Why? Because it was a pleasant place to stay and I had never been there.

Q. Was it because you would be nearby so that when the divorce was granted you would marry? A. It was not.

Q. But that is the fact? A. That is not the fact.

Q. Well, you were nearby when the divorce was granted and you did marry? A. Would you like to know the whole story as to why?

Q. Yes.

A. All right, you have asked for it; now I have the right to explain it.

Q. Go right ahead.

A. I went out, Mr. Coe did not intend to return to Worcester but he knew that I could control his properties and handle them for him. The apartment had to be closed out in New York on the first of October. He had been in the hospital in September and he did not feel well. I went out and he gave me full authority to return to Worcester to dispose of his property, to close out his apartment in New York, and when we talked, that is, Mr. Bible, Mr. Coe and myself at Lake Tahoe, the arrangements were made for me to return with the papers that would give me the authority to act as Mr. Coe's agent. There was absolutely no talk of marriage and I did not know when I was going to marry Van, or if I was going to marry him. We had absolutely no thoughts of it until Van learned I was going back. The divorce was granted, and he said that he felt it would be lonesome out there; and that was just about two o'clock and Mr. Bible, we asked if arrangements could be made to get married in short time. I thought the laws there were the same as here and you would have to wait. He said no, that we could be married; and we were married about 4:15 in the afternoon. But there had been no talk of

marriage or anything else. It must have been a relief to him to have someone who knew how to handle his property.

Q. So you were relieved when you married, were you?

MR. PERMAN: (Laughing) I pray Your Honor's judgment.

WITNESS: What do you mean?

Q. That is strange to you?

MR. PERMAN: Wait. I object to that.

MR. FUSARO: I withdraw it.

Q. So you accomplished what you had gone after for a long time—you had taken Mr. Coe away from Mrs. Coe? A. No.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She has answered it and the question and answer may stand.

Q. But now you say after this long dissertation you gave that you came back to Worcester not to live, but to dispose of his holdings?

A. That is correct.

Q. You were to be his agent? A. That is correct.

Q. You were to sell everything?

A. As his agent authorized by him, and under his guidance.

Q. Holdings to the value of a half million dollars?

A. (Laughing) Oh, his estate is not that much. You would like to have the Court believe it, but it isn't that much.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: All you need to say is "No."

WITNESS: I'm sorry.

Q. But you came back to the very place that Mr. Coe had previously lived, 6 Boynton Street? A. Not directly.

Q. Well, you had a little honeymoon in New York?

A. I wouldn't call it that exactly—not packing furniture for a week; I wouldn't call it a honeymoon.

Q. But you did finally come back to 6 Boynton Street?

A. That's right.

Q. And did you announce that as your home? A. I did not.

Q. You announced it as your home? A. I did not.

Q. And that is the place where you and Mr. Coe returned to about October 1st, 1942, and you announced to the world that that was to be your home?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I did not announce it was to be my home. To the world?

Q. Yes.

A. It would have needed a world-wide broadcasting system. I certainly did not.

Q. Well, you did broadcast it?

A. I don't believe so, Mr. Fusaro. Not as you imply, anyway.

MR. FUSARO: May I have a moment, Your Honor?

THE COURT: Yes. (Mr. Fusaro searches among his papers)

Q. I show you a picture.

A. That was on the obituary page, remember.

MR. MASON: Just try to answer the question, Mrs. Coe.

Q. Pardon me. Probably you didn't wait until I finished my question.

A. I apologize to you, Mr. Fusaro. I'm sorry.

Q. Now this is your picture, is it not? A. Yes, I think so.

Q. Do you mind reading that?

MR. PERMAN: Wait a minute.

Q. To yourself. A. Yes?

Q. You had that put in the paper, did you not? A. I did not.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer.

Q. You have read it? A. I have read it.

Q. And after you read it did you take any steps to have that announcement that 6 Boynton Street was your home withdrawn from publication?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it.

MR. MASON: There is an assumption in the question.

MR. PERMAN: There is nothing before the Court that there was any such announcement made.

THE COURT: He may have the question: You did nothing to seek to have—what was the word you used?

MR. FUSARO: This announcement that 6 Boynton Street was their home withdrawn.

THE COURT: If you leave out 6 Boynton Street you may have the question.

MR. FUSARO: Yes, Your Honor.

MR. MASON: She hasn't testified that she ever announced it, Your Honor.

WITNESS: I just read it now as it was given me.

Q. You mean to say you have never read that before?

A. Not the one you have in your hand.

THE COURT: Pardon me just a moment. I said he may have it if he asks the witness if she did anything to have that statement corrected.

MR. MASON: If Your Honor please, that statement is not evidence and is not in evidence, and I don't know what this is, and I don't know whether Your Honor knows what that statement is.

THE COURT: That is why I excluded 6 Boynton Street from the question.

MR. MASON: Now the question relates to an announcement which is not in evidence. What was the question?

(Stenographer reads aloud question)

MR. MASON: A pretty devious way to get something in evidence.

THE COURT: I exclude the question.

Q. After reading this announcement did you take any steps to correct any error that you say might have been made?

MR. PERMAN: I object to that.

THE COURT: Well, I think I will exclude it, Mr. Fusaro, because I would exclude the newspaper clipping if it was offered.

MR. FUSARO: Well, in view of the fact that she read it—

THE COURT: Well, I permitted you to ask her if she read it and I permitted you to ask her if she authorized it. I would permit you to ask her if she gave that information to the newspapers. I would permit you to ask her if anybody interviewed her and secured that information from her.

MR. FUSARO: Very well, Your Honor.

Q. Did you give anybody the information that is on this clipping?

A. I did not.

Q. Did you authorize anybody to give that picture and the information to the newspapers? A. I did not authorize it, no.

Q. Were you interviewed with anybody in connection with the Worcester Telegram? A. No.

Q. You say no? A. No.

Q. This appeared in the Worcester Telegram October 3, 1942, two days after your arrival here?

MR. PERMAN: I pray Your Honor's judgment.

WITNESS: I don't know, I see—

MR. MASON: Just a moment, Mrs. Coe.

THE COURT: I take it that that statement is no more than calling the witness's attention to the particular article, and it isn't evidence in itself when it appeared.

MR. FUSARO: Well, I offer it, if Your Honor please.

MR. PERMAN: Objection.

THE COURT: I will exclude it, unless you can show that she did in fact authorize it and that she did in fact give her picture, and that she did in fact give the information. Newspapers sometimes have persons' pictures on file, and many times print news on mere hearsay information from other persons.

Q. Well, after you returned here October 1st, 1942, 6 Boynton Street, Worcester was your residence, the residence of Mr. and Mrs. Martin V. B. Coe? What is your answer?

A. Well, do you mean Mrs. Martin V. B. Coe #1 or #2?

THE COURT: Well, I take it that he is now referring to you.

WITNESS: Well, we resided there.

Q. That was your home and residence? A. No, it was not our home.

Q. Where was your home if 6 Boynton Street was not your home in October of 1942?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: I wouldn't call it a home because it was just the same as stopping at a hotel in some town. We were getting ready to go on to another place. Would you call a hotel your home?

MR. FUSARO: I ask that be stricken.

MR. PERMAN: I call that responsive.

THE COURT: No, it was not.

Q. You say that 6 Boynton Street—

THE COURT: Just a moment. I rule it was not responsive. You asked her "Where was your home?" Then she answered something pertaining to 6 Boynton Street. That was not the question, because she said that was not her home and you then asked her where was her home.

Q. Where was your home then?

MR. PERMAN: Wait a minute.

THE COURT: She may answer.

MR. PERMAN: I take exception to Your Honor's previous ruling, and I take objection to this question.

Q. What is your answer?

MR. FUSARO: His Honor has ruled twice.

MR. PERMAN: I except to Your Honor's ruling.

Q. What is your answer?

A. My home is wherever my husband intends to make his domicile.

Q. I see. And that is Worcester, Massachusetts?

A. That is not Worcester, Massachusetts.

Q. That is exactly what you said before, that it was Worcester, Massachusetts? A. I did not say—

MR. PERMAN: Wait a minute. Will you give me a chance to make my objection? I don't think there ought to be a series of questions propounded at the same time. To the first question that was asked and remains unanswered, the respondent objects.

THE COURT: She had answered it, but the trouble with the last question is that if you are asking if she didn't make a contrary statement, you must make clear to her the time.

MR. FUSARO: I see.

Q. In 1943 you and Mr. Coe were asked to state where your domicile was and you gave it as Worcester, Massachusetts?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: It is excluded in that form. You included her and Mr. Coe and she can be asked only with reference to statements she made herself.

MR. FUSARO: Your Honor is quite right on that.

Q. In November of 1943 you were asked where your domicile was, and you gave Worcester, Massachusetts as your domicile?

MR. PERMAN: Objection.

THE COURT: I don't think it would be clear to me just when she made the statement.

MR. FUSARO: November 1943.

MR. PERMAN: Or the circumstances under which that statement was made.

THE COURT: I think you ought to make it a little clearer.

MR. FUSARO: Yes, Your Honor.

Q. In the certificate of condition that was filed with the Commonwealth of Massachusetts on November 30, 1943, you were asked to state where your domicile was, and you gave it as 6 Boynton Street, Worcester.

MR. PERMAN: I object to that.

MR. MASON: Is he reading accurately from the paper?

MR. FUSARO: Pardon me now. I object to you making any insinuations. (Brief colloquy off record)

THE COURT: She may answer whether or not she made that statement.

WITNESS: I did not.

THE COURT: Did you understand the question? Whether or not you made that statement.

WITNESS: That I was of Worcester? Domicile here in Worcester?

THE COURT: Yes.

MR. FUSARO: November 30, 1943, Your Honor.

WITNESS: Your Honor, when you read the statute it did say when a question was asked it could also be explained, or am I wrong?

THE COURT: Yes, you may be given opportunity if you ask for it to have an explanation made.

MR. MASON: Just a moment. I would like to make the suggestion, if Your Honor please, that this seems to be entirely irrelevant to any issue pertaining to Mr. Coe. I assume, Your Honor is allowing this witness to answer a question to bind Mr. Coe in these proceedings. If so, I think that is entirely irrelevant. If that is the purpose of the inquiry.

MR. PERMAN: It may be conceivable that husband and wife may have separate intentions.

MR. FUSARO: But she has testified differently. She has put herself on record already about that, Mr. Perman.

MR. PERMAN: I am well aware of her testimony.

THE COURT: She has already testified that her domicile was wherever her husband's domicile was. I don't know whether she used the word domicile or residence.

WITNESS: I used "domicile," Your Honor.

MR. MASON: But in any event, it is question of Mr. Coe's domicile; not her domicile.

MR. FUSARO: I don't see any occasion for this discussion.

MR. MASON: The Court is perfectly competent to correct me if I am in error; not you.

THE COURT: In view of that fact, in view of her testimony he may have the question.

Q. It is true, is it not, that at the very moment that that question was answered in this certificate of condition you were then acting under the advice of your counsel, Mr. Perman?

MR. PERMAN: Objection.

THE COURT: He may have it. **MR. PERMAN:** Exception.

THE COURT: I want to rule on something else at this time. The witness asked for opportunity to explain the statement, and she may be given that opportunity.

WITNESS: You asked me whether or not in Nevada in 1943 I was asked if my domicile was in Massachusetts, or in Worcester, and I said "Yes." That was your question, wasn't it? I wasn't asked that; I didn't say it. It happened to be one of those occasions where you sign a document without reading it.

Q. Oh, that's the way you want to explain this?

A. I am sorry, Mr. Fusaro, but it happens to be the truth.

Q. What document did you sign without reading it that contains the statement that your domicile is in Worcester, Massachusetts?

A. Well, many of the papers presented to me I signed. It seems they needed my signature and I just, well, I don't know, I just go ahead and sign them.

Q. Well, what are those documents you signed giving Worcester, Massachusetts as your domicile?

A. Well, I have learnt that it is the papers pertaining to Tarbox Realty; also on my registration I believe it lists Worcester, naturally, the registration for my car.

Q. And what else?

A. Offhand, it would be hard to say. I have signed papers that have been presented to me; not here in Court. I don't know.

Q. When was it discovered that you signed papers in connection with Tarbox Realty Company giving Worcester, Massachusetts as your domicile?

MR. PERMAN: Objection.

THE COURT: She may answer. **MR. PERMAN:** Exception.

WITNESS: From the type of question you ask me and from the paper in your hand, the inference may be drawn that it must be on that paper;

not knowing all the papers in Tarbox Realty. I didn't bother to read them over.

MR. FUSARO: I offer this document (handing paper to Mr. Perman).

MR. PERMAN: I object to it. (Paper handed to Court)

MR. FUSARO: I call Your Honor's attention to the question with respect to domicile (indicating on paper).

THE COURT: Do you want to read it for the record?

MR. PERMAN: Does Your Honor rule it is admissible?

THE COURT: I haven't ruled yet. I would like to have it appear in the record first, before I rule on it. I won't rule that it is all admissible in any event.

MR. FUSARO: I only offer it for one purpose, Your Honor, and when we come back I will be glad to state it.

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION

MR. FUSARO: If Your Honor please, I have certified copy of the certificate of condition filed by the Tarbox Realty Company with the Commonwealth of Massachusetts. It bears the attestation of the Secretary of the Commonwealth, F. W. Cook, as being a true copy of the original filed in the office of the Secretary of the Commonwealth on November 30, 1943; and I offer it with respect to the domicile as given by the officers and directors of the corporation at the time, whether it was Martin V. B. Coe, President; Treasurer Martin V. B. Coe; Clerk Samuel Perman; Directors Martin V. B. Coe, D. Eileen Coe, Samuel Perman. With respect to the residence, Martin V. B. Coe has admitted that in November 1943 Worcester was his domicile. With respect to the witness, Mrs. Coe #2, I offer it in contradiction of her testimony.

MR. PERMAN: Objection.

MR. FUSARO: Do you agree that that is a duly authenticated copy?

MR. PERMAN: I agree that is a duly authenticated copy. That is not my objection.

THE COURT: It may be admitted. MR. PERMAN: Exception.

Q. When you went to Lake Tahoe, California, Mrs. Coe #2, where did you live? A. Camp Richardson.

Q. Is that in Lake Tahoe, California? A. That's right.

Q. And you remained there from the time you arrived until when?

A. Until September 19th, about two in the afternoon, or three in the afternoon.

Q. And Mr. Coe paid your expenses, did he, for your stay at Lake Tahoe? A. No.

Q. Did you pay them? A. 'm, 'm.

Q. What's that? A. I did.

Q. From your own money? A. From my money, yes.

Q. You are sure that Mr. Coe did not pay your expenses at Lake Tahoe?

A. I paid them with money that had been given to me prior to that.

Q. By whom? A. By Mr. Coe.

Q. So it was Mr. Coe's money that paid for that? A. Yes.

Q. When prior to that did he give you this money?

A. He gave me money prior to his leaving New York for Nevada.

Q. How much did he give you?

MR. PERMAN: I object to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: \$500.

Q. And the money that he gave you prior to leaving New York amounting to \$500 was for what?

MR. MASON: I object. Would Your Honor permit me to make a suggestion at this time for the purpose of avoiding encumbering the record with repeated objections and exceptions which we dislike to make as much perhaps as the Court dislikes to have them. I wonder if Your Honor would reconsider your previous ruling that we could not take a general exception to a line of inquiry. If we could it might save us all time and inconvenience of having to object to every question and saving our rights. In other words, we should like to have a general exception, if Your Honor please, if Your Honor would limit it with reference to the line of inquiry with this witness on any issue involving the domicile of Mr. Coe in Nevada: on any issue outside of the issue pertaining to the plea in bar at this time, on the cross-examination of this witness by the counsel for the petitioner who called this witness; and on the retrial of any issues that were previously tried in this case in the original separate support hearing. If we could have an exception saved on the general

line of inquiry with this witness with respect to any such matters, and have our rights saved, it would avoid the necessity of our constantly having to object and save exception.

THE COURT: Well, of course I won't grant you any such exception as that, because you have included in it, for one thing, a retrial of, I don't know just how you stated it, but trial of previous issues. Now we are not trying any previous issues at all. I think I stated fully not once but more than once on what ground I was admitting this line of inquiry. You took exception to that, as I remember, and to practically every question since—practically every question that has been asked in the trial, for that matter.

MR. MASON: Well, we are placed in that position because of the law applicable to this case. ~~We don't do this whimsically.~~ We have a duty to our client to preserve his rights, and if we can't have a general exception we are placed in the position of having to object and except to every question.

THE COURT: Well, I am glad to have you say that for some reasons.

MR. FUSARO: Well, it would seem to me that a general exception should not be permitted; that if he desires to except to the introduction of any evidence he ought to make it known in the usual way.

THE COURT: Well, of course they have taken an exception to the line of inquiry.

MR. FUSARO: And they may have some difficulty in determining where to draw the line. Rather than have it understood that a general exception is to be taken I should think he ought to be ordered to follow the usual course.

MR. MASON: I simply offer the suggestion for everyone's convenience. I know it is unpleasant for everyone.

MR. FUSARO: Well, I don't think we will save any time, Your Honor.

THE COURT: Well, let's go on as we have been.

(Certified Copy of Certificate of Condition Marked Ex. 8)

Q. Mrs. Coe #2, what were you given \$500 for?

MR. PERMAN: Objection.

THE COURT: You have had one; do you want two?

MR. FUSARO: You have already excepted to it.

Q. You may answer.

A. In May of 1940 I was riding horseback and they told Mr. Coe at the stables that I was down on the trail riding; and he came along in back of me and wanted to race. He brought the quirt down over the horse's rump and as a result the horse started to buck. I was thrown and the femur of my right leg was smashed. I was unable to walk for some time, and Mr. Coe, after my hospital expenses, doctor's expenses and so forth were paid, he also paid me \$500.

Q. In New York? A. Not in New York.

Q. Where? A. Here in Worcester.

Q. When?

A. I told you after, oh. I guess I got around in October or November of that year.

Q. So that was in November of 1940? A. Yes.

Q. We were talking about this \$500 you received in New York in 1942, prior to this Nevada trip.

A. I told you he gave it to me prior to leaving for Nevada; I didn't say just when.

Q. Didn't you say it was in New York you got the money?

A. I didn't; I said it was prior to his leaving for Nevada.

Q. Would you say it was in 1940 that you got the money?

A. That's right.

Q. I see. Well, I had asked you a question with respect to this trip at Lake Tahoe, California. A. You asked me when I got the money.

Q. Pardon me: Will you mind waiting until I ask the question? I had asked you about your trip to Lake Tahoe, California, and asked who paid for it and you said you paid for it. A. That's right, I did.

Q. And I asked if you received that money from Mr. Coe for that trip, and you said yes. A. I didn't say he gave it to me for the trip.

Q. You didn't say that? A. No.

Q. Well, what do you say now about it?

A. I say that in 1940 when I was getting over a convalescence—

Q. I'm not talking about—

MR. PERMAN: I pray Your Honor's judgment. I think the witness may be permitted to answer here.

THE COURT: I think she may.

WITNESS: In 1940 when I was convalescing I was not able to get around, as I testified before; I was in a brace for some time and then on

crutches as a result of that accident. Mr. Coe was aware of the fact that I couldn't work—I couldn't very well go down to the office on crutches, so he gave me the \$500, which was prior to his leaving New York for Nevada. He gave it to me here in Worcester.

Q. That was in October 1940 you just testified? A. Yes.

Q. I ask you now did you get any money from Mr. Coe in 1942 to pay for this trip to Lake Tahoe, California? A. No.

Q. You didn't— A. I used that money.

Q. And you say that Mr. Coe did not pay your expenses in 1942 that you incurred at Lake Tahoe, California?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer. MR. PERMAN: Exception.

Q. Yes or no. A. Well—

Q. You wouldn't mind answering that question yes or no?

MR. PERMAN: I pray Your Honor's judgment.

MR. FUSARO: I think it can be answered directly yes or no, Your Honor; and if I may, I would prefer to have that kind of an answer.

THE COURT: May I have the question. (Stenographer reads question)

THE COURT: I rule that she may answer. I see no reason why that cannot be answered yes or no.

MR. PERMAN: Exception.

Q. What is your answer?

A. I'm sorry, because if I say "yes" that sounds as though he gave me the money at the time; but indirectly he had given me that money to compensate me for my broken leg. I used that money, but it was not given to me for the purpose of going to Nevada. So yes and no. His money was used.

Q. Would you like to have it both ways?

A: Mr. Fusaro, I am trying to answer; I'm sorry if my answers are not satisfactory to you.

Q. Well, I am wondering—

MR. PERMAN: Wait a minute.

THE COURT: I suppose that is a matter of argument.

MR. FUSARO: Yes, Your Honor.

Q. Well, did you obtain any money in 1942 from Mr. Coe for the return trip from Nevada to Worcester? A. That's right.

Q. You did? A. Yes.

Q. Did you obtain any money in 1942 from Mr. Coe for the trip from Worcester to Lake Tahoe, California? A. I did not.

Q. How much did you obtain from Mr. Coe in 1942 for the return trip from Nevada to Worcester?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: Well, I don't exactly know what the price of the ticket was from Reno to Worcester, but he did buy the train fare, he paid the train fare, he bought the tickets for mamma and I and he gave me \$100 in cash for my expenses back.

Q. For your expenses back? A. That's right.

Q. For your expenses back to Lake Tahoe?

A. No, back to Worcester.

Q. Wasn't there some arrangement made at that time that you would come back to Lake Tahoe? A. There was not, Mr. Fusaro.

Q. Nothing said about coming back? A. Not a thing.

Q. But you did go back? A. I did.

Q. And you went back so you could be close by, so when the divorce was granted you could be married?

MR. PERMAN: I object.

WITNESS: I did not.

MR. FUSARO: That is all.

MR. PERMAN: That is all.

MARTIN V. B. COE, recalled by Mr. Fusaro, testified further as follows:

Q. BY MR. FUSARO: You are Martin V. B. Coe? A. Yes.

Q. Mr. Coe, since this agreement that was entered into in Nevada between you and Mrs. Coe #1, how many payments have you made?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. His Honor said you may answer. A. Two or three payments.

Q. You made two payments? A. That's right.

Q. Of \$35 each? A. That's right.

Q. And you made those two payments after arriving in Worcester?

A. Yes.

Q. And you mailed them out from 6 Boynton Street?

A. I don't know.

Q. You don't know. But anyway you send two payments, that right?

A. That's right.

Q. Let me have those checks, please. A. I haven't got them.

Q. Who has them? A. I don't know.

Q. You don't know? A. No.

Q. Well, when did you last see them?

THE COURT: I wonder if it is clear enough in the record just what you are talking about. Let's read the opening questions.

(Stenographer reads aloud first two questions and the answer, "Two or three payments.")

THE COURT: I don't think it is clear enough what you mean. I mean for the purposes of the record.

MR. FUSARO: If I may have a moment. I refer, Your Honor, to the agreement that was incorporated in the Nevada decree of divorce granted on September 19th, 1942.

Q. You understand that that was the agreement that was referred to, Mr. Coe? A. Yes.

THE COURT: And the payments.

Q. Yes, and that the payments were with respect to that particular agreement, is that right? A. That's right.

THE COURT: Then I don't understand what payments you mean.

MR. FUSARO: Probably I should call Your Honor's attention to—

THE COURT: There was one payment in regard to that, the \$7500 payment.

MR. FUSARO: That is right.

THE COURT: And then the payment of \$1000 to the attorneys. Now you mean some payments in addition to that?

MR. FUSARO: Yes, Your Honor. There were two payments of \$35 each. That agreement provided that Mr. Coe should pay Mrs. Coe \$1-\$35 a week (hands record to Court). I don't know if that has been read into the record.

MR. MCKEON: I think they are Exhibits 4 and 5; two envelopes.

MR. FUSARO: I believe they have been offered in evidence in some form.

MR. MASON: Exhibit A. Are you talking about the agreement?

THE COURT: Yes.

MR. PERMAN: They are a part of the Nevada proceedings.

MR. FUSARO: Well, it is in evidence anyway.

MR. PERMAN: It is in evidence.

THE COURT: Well, I am somewhat at fault, and I can see that, for not having read it more carefully.

MR. FUSARO: No, I don't think it was read, Your Honor. I think it was mentioned, that document, by "An agreement."

(Court scans same)

THE COURT: All right; I understand it better now. And I understand you are now referring to the payments under this contract they entered into?

MR. FUSARO: Yes, that is right.

THE COURT: And any payments he made under the decree of the Court or to satisfy the decree of the court.

MR. FUSARO: That is right, Your Honor. I desire to call to Your Honor's attention this particular paragraph in the Nevada Court's decree that was entered September 19, 1942. It is on Page 37, if Your Honor please, of this printed record; Page 37, at the very top: "It is further ordered that the written agreement entered into between the plaintiff and defendant herein on the 16th day of September 1942 be, and the same is, ratified, approved and confirmed and adopted by the Court as a part of its judgment herein, and each of the parties is hereby ordered and directed to comply with the terms thereof."

MR. MASON: I desire to call that to Your Honor's attention.

MR. FUSARO: And I desire to call to Your Honor's attention on the next page, page 40 of the record, that the parties to the agreement acknowledged it before a Notary Public on the 19th day of September 1942. So there may not be any confusion for the record, Your Honor, may I refer to it as the Nevada agreement?

THE COURT: All right, that seems reasonable enough.

Q. Now Mr. Coe, did you make any further payment under that Nevada agreement? A. No.

Q. And you say that the Nevada agreement in addition to providing for the payment of the \$7500, provided that you were to make weekly payments of \$35 each and every week to Mrs. Coe #1, that's right isn't it?

MR. PERMAN: I object. I think the agreement speaks for itself, Your Honor.

MR. FUSARO: It is only a preliminary question anyway.

THE COURT: Well, it may be treated as a preliminary question. Of course it is clear that it does so provide. You don't deny that?

MR. MASON: No.

MR. PERMAN: We insist on it, if Your Honor please.

THE COURT: Then there is no harm done.

MR. PERMAN: No. I did feel that this witness ought not to be called upon to give any testimony which would involve his interpretation as to the construction, terms, legal effects of the contract.

THE COURT: That is true. It need not go any further.

Q. Well, you knew that, didn't you? A. Yes.

Q. And it is true, is it not, that you have not made any further payments under the Nevada agreement because you know that it is of no force and effect?

MR. PERMAN: Wait a minute. I pray Your Honor's judgment.

THE COURT: I think his reason for not making payments may be inquired into and may be received in evidence; not as to his interpretation of the contract but as to his reasons for not making payments.

MR. PERMAN: I think the question then ought to be submitted to the witness in that form. You cannot divorce that question from its plain meaning that he regarded the contract as being null and void. The question calls for his interpretation.

THE COURT: Well, it is asked in a leading form, which of course may be done because he is under cross-examination as an adverse party. But I won't take it that that is his interpretation or that he is giving any interpretation of the contract.

MR. MASON: In view of Your Honor's ruling don't you think that the question should be rephrased to eliminate the possibility that—

THE COURT: I think it might be well to.

MR. FUSARO: Very well.

Q. Well, you have not made more than two payments under the Nevada decree because you knew that no further payments were required under that agreement.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If that is not his reason he may state—I think he may answer that, he may say yes or no whether that is his reason.

MR. PERMAN: Exception.

Q. What is your answer? A. Repeat that again, please.

(Stenographer reads aloud question)

WITNESS: No, no.

Q. Were you aware that you were to make further payments under the agreement?

MR. PERMAN: I object to that.

THE COURT: You are now speaking of the agreement.

MR. FUSARO: Yes; I'm sorry, Your Honor, the Nevada agreement; I should have stated the Nevada agreement.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. You may answer, sir. A. Yes.

Q. Why didn't you keep up your payments?

A. Because I was advised by counsel.

Q. I see. So that you have refused to honor the Nevada agreement on advice of counsel, that's right, isn't it? A. I leave it to my counsel.

Q. You leave it to your counsel; very well. And it is true, is it not, Mr. Coe, that you have not made any payments under the decree of this Court entered March 25, 1942, since October of 1942?

A. What do you mean, this court?

THE COURT: He is referring now to the original decree of \$35.

WITNESS: Oh.

THE COURT: He is asking you have you made any payments on the decree of this Court of \$35 a week since October of 1942. Is it clear now?

WITNESS: Yes, that is clear now, Your Honor. No.

Q. It is true that you have not made any payments under the decree entered in this Court March 25, 1942 since September 19th, 1942, when you went through this marriage ceremony at Nevada?

A. I paid up all July and August; as to September, no.

Q. Then since September of 1942 you have not made any payments under the decree of the court entered March 25, 1942?

A. There was a Worcester decree, yes.

Q. All right, we will call it Worcester decree. May we state for the record that decree refers to the petition of Mrs. Coe #1 for separate support?

THE COURT: Yes.

Q. And you knew, Mr. Coe, that when you did not make your payments under the Worcester decree of this Court that you were in default?

MR. PERMAN: I object to that.

THE COURT: Well, I think he may give his interpretation of it.

MR. MASON: May we have a general exception now to any inquiries pertaining to any issues or any alleged failure to pay any sums due under the Worcester decree so-called?

MR. FUSARO: If I may suggest to the Court, we have a petition for contempt as one of the issues before Your Honor.

THE COURT: I understand it.

MR. MASON: It has been our position consistently that in view of the Nevada decree and Nevada agreement, the general proceedings in Nevada, that that issue was not open to this Court now and that we should like a general exception saved, if Your Honor will permit it.

THE COURT: Perhaps I view it differently than you. Perhaps I view the whole question of exceptions differently. Evidently I do. I don't think you need any exception. If this agreement is binding upon the parties, if they could make such an agreement and it is binding in law, then that ends it. That question I have not yet decided. It would in my opinion, if it is valid and binding upon the parties in Nevada and everywhere else, then it would end all—

MR. MASON: Of course we want to be very certain that we are not acquiescing in the trial of any issues in this Court in view of the Nevada proceedings which were in evidence, and therefore we felt compelled to preserve our rights as to the taking of any evidence on any other issue. Now perhaps we were in error in assuming that was necessary, but certainly that was one of our principal purposes and motives in saving our rights.

THE COURT: Well, isn't it one of the purposes of the trial, whether there is an exception or not?

MR. MASON: With due deference to the Court, we have been placed in this position; Your Honor did not see fit to take up the plea in bar in the first instance and pass upon it. If that were done it seems it might have simplified the problem. However, all issues in accordance with Your Honor have been opened up simultaneously as it were, and we were in position where we had to save our rights. I hope Your Honor has not misinterpreted our objections and exceptions right along.

THE COURT: Well, perhaps I did. I consider that the defense is open to you throughout, and it still is; it still remains as a defense whether you object to the introduction of this testimony or not. That is my understanding.

MR. PERMAN: May I make this further observation?

THE COURT: Pardon me. And that you lose no rights.

MR. MASON: Well, I am glad to have Your Honor's view of it at this late stage, and Your Honor ought, perhaps, to have ours. But that is the theory we have proceeded on and I think it is due somewhat to the difficulty we have all had to proceed.

MR. FUSARO: Well, I haven't. Talk for yourself.

MR. MASON: Well, we have. It may be that Mr. Fusaro does not appreciate that. One of the difficulties that I have had, if Your Honor please, is that in view of the fact that the plea in bar was presented to the Court and evidence taken, the permission of the Court to grant counsel for the petitioner over our objection to proceed on the question of domicile and other matters of issues in the case, indicated to us in the . . . that Your Honor was giving no legal effect to the Nevada proceedings.

THE COURT: Most certainly not.

MR. FUSARO: If Your Honor please, Mr. Mason has raised that very point time and time again, and it seems to me that I ought to be permitted now to proceed with the examination of this witness without that point being reiterated again.

MR. MASON: Going back to our original suggestion, regardless of whatever misunderstanding occurred, whether or not we are right in assuming it is necessary for us to preserve our rights, we should like the opportunity to make a general objection and take exception to the introduction of any evidence through this witness with reference to the issue of contempt or modification, and if we could have our rights saved on that it would relieve us considerably, at least.

THE COURT: Well, let me say this: What I am trying to do is follow out the directions of the Supreme Court in the decision handed down and that we have referred to so often as to how this trial should proceed and as to what issues should be tried out and what issues should be heard which were not heard in the last proceeding.

MR. MASON: And the Court I think there dealt only with the plea in bar, if I am not mistaken.

MR. PERMAN: The Court there dealt with the preliminary issue entirely, the Supreme Court.

MR. MASON: There I think the Supreme Court said the petitioner should have been given opportunity to attack the validity of the Nevada

decree. Now as to what kind of evidence was competent for that purpose I don't think was necessarily spelled out, because it depended on what the Nevada proceedings show as to testimony, among other things. It would indicate that the Supreme Court felt that that preliminary matter should first be dealt with by the Court.

THE COURT: Well, it has been my intent from the start, and I think I have stated it before, to try out all the issues and to hear all issues so that if it goes up again, as it no doubt will, all the issues may be before the Court.

MR. MASON: Well, I think the Court has not yet acted on my suggestion about our being permitted to save a general exception for the reasons already stated.

THE COURT: Well, that has been raised many times. At one time I had it in mind I would permit you to, but things have developed since which led me to believe that that was not a wise conclusion to reach.

MR. MASON: I will defer to whatever the Court recommends.

THE COURT: But as I stated, it is my understanding that you lose no rights on the issues that you have raised under Nevada proceedings, either with the decree of the Nevada Court or the agreement.

MR. MASON: And that there is no implication from the introduction of evidence as to any rulings of Your Honor on that Nevada, on the evidence submitted with reference to the Nevada proceedings.

THE COURT: I don't quite get that.

MR. MASON: I say Your Honor is making no implication—Your Honor is not making any implied ruling then with regard to . . . and with reference to the other issues in the case?

THE COURT: Not at all.

MR. MASON: Well, I think that helps to clarify it.

THE COURT: Not at all. No indeed, I had no intention to.

Q: What do you say was the advice that was given you not to pay any more money under the Nevada agreement?

A: Because of the Nevada agreement which supercedes it.

Q: Probably you did not understand my question. You were advised by your counsel not to make any further payments under the Nevada agreement. Now I ask you what advice did you obtain with respect to making any further payments under the Nevada agreement?

MR. PERMAN: I object to that.

WITNESS: I cannot answer.

THE COURT: I will permit that. Well, he has answered it.

(RECESS. HEARING RESUMED)

Q. Mr. Coe, in 1930 you received about \$125,000 from the estate of your father, that right?

MR. PERMAN: Wait a moment. I pray Your Honor's judgment.

MR. FUSARO: I propose to show what the wealth of this man is, Your Honor, in connection with the petition for a modification of the decree of March 25, 1942.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

MR. PERMAN: May I point out, Your Honor, there was a decree after full hearing on March 25, 1942, in which proceedings all this matter now being referred to was both heard and determined. I don't think the petitioner ought to be allowed to rehear and retry a matter that was in issue and was judicially determined by this Court.

THE COURT: Well, I have already stated that we cannot retry or rehear any issues. But it is my understanding that on a petition for modification the financial condition of the person from whom you seek payments is a proper subject of inquiry, whether previous payments have been ordered or not.

Q. That is true, isn't it?

MR. PERMAN: Wait a minute. I should like to point out, if Your Honor please, in the amended petition for modification—and I think it might be well to spend just a little time going into it now so Your Honor will understand the position of the respondent here—on the amended petition for modification the only paragraph under which relief if any could be—

MR. FUSARO: What page are you reading from?

MR. PERMAN: I am reading from Page 52 of the record that was before the Supreme Court and which is marked for identification in these proceedings, Paragraph 7: "Under all the facts and circumstances, including increased cost of living, the adequate financial means of the respondent, and the reasonable needs of your petitioner according to her status of life of which the respondent wrongfully deprived her, \$35 per week is in amount insufficient in fact and in law." That was the issue that was presented to the Supreme Judicial Court in 313 Mass.

THE COURT: Was that the first decision or second?

MR. PERMAN: That was the first decision, and according to which decision as I understand it that test laid down by the petitioner and adjudged by the petitioner before the Supreme Judicial Court was held not to be the test for a determination of support. We already have both a decree of March 25, 1942 and we have that decree affirmed by opinion of the Supreme Judicial Court. I think nothing is open on this petition for modification. As it stands there is no evidence that could be competent; even if there were, generally speaking, some bases or grounds for modification it must necessarily arise on circumstances following that decree of March 25, 1942, and necessarily precludes any inquiry prior to that time.

MR. FUSARO: But the law is different than Mr. Perman has stated, and I think that is correct to say that the financial condition of this man can be brought out in this proceeding.

MR. PERMAN: I think so far as the law is concerned the only known and certain law in reference to that is that no woman is entitled to support as a matter of law in idleness even though she is living apart from her husband for justifiable cause. Essentially that decree of March 25, 1942, essentially and basically that was a discretionary matter. That is the substance of it; that is the basis of it. That was the ground upon which the Supreme Judicial Court affirmed in a decree to enable the petitioner now to resume those proceedings had before whether they concerned the amount of the estate of this respondent or her reasonable needs as is alleged here or according to her status of life of which the respondent wrongfully deprived her, that is in substance and in effect a review of a discretionary matter which is not the subject of modification.

THE COURT: If that were true, Mr. Perman, there never could be modification of any decree of support, whether it went up to the Supreme Court or not.

MR. PERMAN: With all due respect for Your Honor's judgment, I don't think that necessarily follows.

THE COURT: Nothing else could follow. If your statement was good law, no petition for modification would ever lie in this Court even though the person ordered to pay was unable to meet the payments or any part of them.

MR. PERMAN: I respectfully submit, if Your Honor please, that that is not the logical result or conclusion from the adoption of what I consider—

THE COURT: You practically said it was a discretionary matter and not now open for modification.

MR. PERMAN: Based upon that evidence that had been presented and that was open to the petitioner to present prior to March 25th of 1942. This evidence that is now proposed to be offered is evidence, supposedly evidence as to the estate of this respondent. I think that goes back to 1930, if I remember; 1930.

THE COURT: Well, let me say this: Suppose Mr. Fusaro started to interrogate this witness and that he did show what his financial condition was at the time the original decree was entered; and suppose, for example—I don't know what he was worth, I have no means of knowing, nothing is before me—but supposing it turned out he was worth half a million dollars—I don't know—and that on that basis he was ordered to pay \$35 a week, and suppose you came back and said yes, that's so, but he now has nothing, he has lost all.

MR. MASON: A change in circumstances since the decree.

MR. PERMAN: Yes, Your Honor, that is something that has developed since the decree.

THE COURT: Even following out your line of thought, if I reached the point of modification of the previous decree, unless I heard evidence on what his financial condition was then and now I would have no manner of knowing whether his condition had changed or whether her condition had changed. I don't even know on what basis the decree was entered. I don't know what his earning capacity was then or what his financial condition was then.

MR. MASON: Well then, for what purpose are we permitting this inquiry on his financial condition in 1930?

THE COURT: For the purpose of determining whether or not there should be a modification of that decree.

MR. PERMAN: Well, that was all resolved in 1942.

MR. FUSARO: We now have a petition for modification.

THE COURT: Just as I stated a moment ago, if your statement were true there never could be modification for support if it was already determined at the time it was made and no evidence can be introduced that would alter it in any way.

MR. PERMAN: Of course that goes back to what we had pointed out originally as one of the difficulties necessarily involved where there is a change or substitution of judges. (As Your Honor has pointed out, it

may well involve a review of evidence that has been adjudicated before. In that sense it becomes a prejudicial matter to the respondent.

THE COURT: We decided that issue, Mr. Perman.

MR. PERMAN: Yes, I am merely indicating the results that follow.

THE COURT: Many petitions for modification are heard where the original decree was entered by another judge, and that must of necessity be so. It was so in Superior Court when divorces were heard there, and petitions for modification of a previous decree for support were heard by another judge. And it is so in this Court, and has been so throughout the Commonwealth.

MR. PERMAN: I understood the rule to be different. But I do want to point out insofar as that single test of the estate of this respondent is concerned in 313 Mass., the Coe case, the Supreme Court did there specifically find that the financial means of the respondent was not a test for the basis of an award.

MR. MCKEON: You have misread the Coe case.

MR. PERMAN: And if it was not the basis for the original award certainly it cannot be the basis for any modification.

THE COURT: I have not read it recently, but that is not my recollection of that decision. I doubt very much if that is the decision; and that is not my understanding of the law. I don't know how any judge could ever make any intelligent order for the support of a wife if he didn't know what the financial ability or capacity of the husband was to pay.

MR. PERMAN: I didn't intend, if Your Honor please, to state the position of the Supreme Judicial Court in that case to leave any such inference, but there is now being offered on the petition for modification evidence relating solely to the financial worth of this respondent. As I take it, a basis for the modification from the amended petition for modification. It is not the test for modification.

MR. FUSARO: It is some evidence, if Your Honor please, of this man's financial worth, which I think is material in every case of this—

THE COURT: I rule it is material and you may answer.

MR. PERMAN: Exception.

Q. What is your answer? His Honor says you may answer. A. Yes.

Q. Now Mr. Coe, in 1931, you received \$349,290.36 from the estate of Augusta F. Jefferson?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: Yes.

Q. And again from that same estate of Augusta F. Jefferson you received an additional \$10,000?

MR. PERMAN: Objection.

WITNESS: That is right.

MR. PERMAN: Wait a minute.

THE COURT: He may answer. He has answered.

MR. PERMAN: Exception.

WITNESS: Your Honor, may I ask you if I may answer that the \$359,000 may include that \$10,000; I'm not sure.

THE COURT: You may so answer.

WITNESS: I'm not sure. It may be included in there.

MR. FUSARO: May I say that the record shows they are separate items?

THE COURT: Of course he may be right and the record wrong; and if so, he may state.

Q. Well, I show you this administrator's account that is dated September 8, 1931 and allowed September 30, 1931, in which it recites that you received \$349,290.36. Now I show you this second account that is dated October 19, 1933, Mr. Coe, and allowed October 19, 1933, in which it states that you have received \$10,000 on November 9, 1931, and that in October 1933 you received \$7,055.39—that right? A. That's right, yes.

Q. Thank you.

THE COURT: Mr. Coe, when you said "That's right," did you mean that is what the account states, or did you mean you actually received those sums?

WITNESS: I received those sums, but I think they are all in one, or they were sometimes separate. The first amount was when the estate . . . and then they divided it, those figures.

THE COURT: And you mean now you are not sure?

WITNESS: I'm not sure, no.

Q. Well, Mr. Coe, this account that was allowed in October 1933 in the estate of Augusta F. Jefferson shows that in addition to the \$10,000 and the cash payment of \$7,055.39 you also got a certificate of Worcester Bank & Trust Company shares, \$2,485.76?

A. That's right.

Q. And you have previously testified, Mr. Coe, that when you organized Tarbox Company under the laws of New York you were the owner of that corporation, that right? A. Yes.

Q. And that you transferred to that corporation all your personal belongings such as cash, certificate of stocks, bonds and other debentures?

MR. PERMAN: Objection.

THE COURT: Are you asking him now whether that is a fact, or whether he so testified?

MR. FUSARO: I am asking him if that is the fact, Your Honor.

THE COURT: In that form you may have it. Do you understand it now? He is asking you not whether you so testified, but if that is a fact.

WITNESS: No, it is not the fact.

MR. MASON: For the purpose of saving our rights in this stage of the proceedings may I inquire whether these questions are being permitted as preliminary questions for the purpose of establishing a change of circumstances since the last decree was entered by Judge Wahlstrom, or whether they are being introduced for the purpose, if Your Honor please, to revise Judge Wahlstrom's original decree? I think it becomes very important.

MR. FUSARO: On the question of this man's financial worth.

MR. MASON: If that is on the question of this man's financial worth back in 1930 then there is not the slightest question that it has no materiality as to the petition for modification.

THE COURT: It wouldn't if it stopped there; but I suppose what a man's financial worth or what a man received back in 1930 was it? Well, it was 1930, 1931 and 1932 and 1933, I believe might be some evidence of what he had today. That is, they would at least be preliminary questions. If I received some \$400,000 back in 1930, '31 or '32, if I didn't spend very much and if I didn't give it away, if I didn't throw it away and if it wasn't taken away from me in taxes, why I ought to have a good part of it today.

MR. MASON: My point is if there is any inquiry open it is what this man had when Judge Wahlstrom made the decree of \$35, and whether there has been any change in circumstances since.

THE COURT: If it stops there, that would be so.

MR. MASON: Then I assume this is preliminary to some material issue.

THE COURT: I take it that it is building up to show what he had at that time and what he has today.

MR. MASON: And by "at that time" do you mean in 1930, Your Honor?

THE COURT: Well, what he had then only as showing what he had later. But if he had a million dollars in 1930 and lost it all—

MR. MASON: My real inquiry is whether, if there is anything open.. as compared with what he had now, if there is anything open.

THE COURT: This may help us to arrive at that fact or those facts; if it doesn't, why it is of no value.

MR. MASON: I wanted to be sure we knew what was being tried here.

Q. Mr. Coe, how much of your wealth did you transfer to Tarbox Company? A. I should think around 50%, or 55. 50 or 55%—

Q. 50 or 55%, that would be how much in dollars and cents?

A. Well, the value at that time I couldn't say offhand, but it might be a little more than \$50,000.

A. A little more than \$50,000. And you realize what you say now, do you? A. Yes.

Q. And that you did not transfer to Tarbox Company from your own assets more than, or a little more than \$50,000?

A. Well, I haven't the figures.

Q. Well, as a matter of fact it was about \$200,000, wasn't it? A. No.

Q. What's that? A. No.

Q. And isn't that what you testified to at the preceding trial in this Court Room in March 1942?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: I don't recall.

Q. Well, do you recall that you were asked questions about your financial condition then? A. Well, it changed somewhat since then.

Q. I didn't ask you if it was changed. I asked you if you were asked questions about your financial condition then? A. I don't even know that.

Q. Weren't you asked what your interest in Tarbox Company was in March 1942? A. Yes.

(HEARING SUSPENDED UNTIL 10 A.M. FEB. 21, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

MARCH 6, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,
Commissioned Stenographer

FEBRUARY 21, 1945 HEARING

MARTIN V. B. COE, resuming stand, continued to testify further as follows:

Q. BY MR. FUSARO (Cont'd): Mr. Coe, you received some money from the Jefferson Manufacturing Company; that's right isn't it?

A. Yes.

Q. And you received a total of \$125,000 from the Jefferson Manufacturing Company? A. As part of an agreement.

Q. But you got that money? A. Yes.

Q. And that was about 1929 or '30? A. '30, I believe.

Q. Well, you owned the Tarbox Company, and I am referring to the corporation that was organized under the laws of New York? A. Yes.

Q. Now I understand that whatever stocks and bonds you purchased you turned them over to the Tarbox Company, the New York corporation?

A. No. I put the cash in the corporation.

Q. Oh, you put the cash in the corporation? A. Yes.

Q. How much cash did you put in the Tarbox Company, and I refer to the New York corporation? A. I don't know.

Q. You have your records here? A. No. I have the records; I haven't got them here.

Q. Where are they? A. I think they are over to the house.

Q. Well, you have been asked to bring in all the records pertaining to this case. A. Well, I don't know where exactly they all are.

Q. But you have them? A. I think so, yes.

Q. You now say you don't remember how much cash you put into the Tarbox Company? A. I can't say offhand.

Q. What is your best judgment? A. My judgment is around fifty.

Q. \$50,000? A. Yes.

Q. I show you answers signed by you under oath. That is your signature, is it? A. Yes.

Q. I show you further answers signed by you under oath, and that is your signature, is it not? A. Yes.

Q. You recall being asked what properties, real, personal, mixed, legal or equitable are you the owner of. Please itemize, giving the name, nature, location, whether encumbered, if so, how and to whom, and when encumbered, and your answer,—

MR. MASON: I object. It is self-identifying what we are referring to:

MR. FUSARO: I will finish my question, if you don't mind.

Q. 1 and 2, real estate at 6 Boynton Street, Worcester, having a bank mortgage and a value of approximately \$7500; real estate at 2 Boynton Street, Worcester, having a bank mortgage and a value of approximately \$7500; three acres of land in Auburn, unencumbered, having a value of approximately \$100; three automobiles having an aggregate value of approximately \$2100; a yacht with a value of approximately \$15,000; bank deposits in Worcester and New York aggregating approximately \$15,000; shares of stocks, bonds and securities, including assets of Tarbox Inc., aggregating approximately \$175,000? A. That's right.

Q. That's right? A. Yes.

MR. MASON: Well now, I object only for the purpose, Your Honor, of identifying the date and nature of these questions and answers. It does not appear when they were answered, in what case, or how. If it is material at all it should show what date they are talking about and whether this anti-dated the determination of the making of the original decree.

THE COURT: You may identify the date of the answers. I suppose that was given as of the date of the answer—that is the answer of the assets of the Tarbox Realty Company and the other assets that he owned was given as of that date.

MR. FUSARO: Yes, Your Honor.

THE COURT: It might differ as of today.

MR. FUSARO: The petitioner filed interrogatories in Case 131205 on March 21, 1941, and the answers of this respondent filed May 3, 1941, and further answers he made on May 26, 1941. And then, if Your Honor please, I offer interrogatories 1, 2, 6, 7, and 8 and the answers thereto, and I offer them, if Your Honor please, as admissions that this man has made as of the date that I have already referred to, or the dates referred to. At that time—

MR. MASON: I would assume in view of Your Honor's ruling yesterday that these interrogatories and answers were filed in this case and pre-dated the decision by Judge Wahlstrom on the original separate support order, and in view of that I assume these are still preliminary questions and admitted as such on the petitioner's petition for modification.

In other words, I would assume that the evidence is not being offered now for the purpose of coming before another Judge now to attempt to obtain a review of Judge Wahlstrom's original decree, which is certainly not in order on the petition for modification. The petition for modification is limited to certain specific aspects of the case, and the entire separate support proceedings cannot be opened now on the petition for modification. If this evidence is being offered preliminary to some material issue on the petition for modification, we have no objection. But if it is being offered on the petition for modification as direct evidence, we object to it.

THE COURT: Well, I agree with very much of what you say, but not not all. Of course in any event it would only be evidence of his worth at that time, and not today. Of course that might be some evidence of what he is worth today. But a man could show that he had lost a substantial amount of these securities perhaps, or that they had depreciated in value, or what not. Of course we cannot review Judge Wahlstrom's decision; certainly not. That is *res judicata*. But this is a petition for modification and it is necessary to know what the man is worth, what he is worth today.

MR. MASON: Under, I suppose—

THE COURT: Let's assume this, to make it simple. Suppose back in 1941 there had been a separate support petition here and the wife was granted separate support; and supposing the man was earning \$25 a week. It would certainly be open to the wife to come in and show that he was earning \$75 a week today.

MR. MASON: On a petition for modification?

THE COURT: Yes.

MR. PERMAN: No doubt about it.

THE COURT: Well, that is about as I view it. And of course it is open to counsel to show that times have changed, that is, that the cost of living has increased and what not, and that the circumstances of the wife have changed. That is about all it is in simple language, isn't it? You don't disagree with that?

MR. MASON: Well, I say as Your Honor said—I agree with some of it but not entirely.

MR. FUSARO: Of what properties, real, personal, mixed, legal or equitable are you the owner? Please itemize, giving name, nature, location, whether encumbered; if so, how and to whom, and when it was

encumbered. And in view of the fact, Your Honor, that the answer is both to 1 and 2, I would like to read #2 and then the answer. You see, it is grouped—1 and 2.

THE COURT: I think it would be proper to read that answer as an answer to 1 and 2.

MR. FUSARO: "2. What is your opinion of the fair cash value of each?" (answers to 1 and 2) "Real estate at 6 Boynton Street, Worcester, having a bank mortgage, has a value of approximately \$7500; real estate at 2 Boynton Street, Worcester, having a bank mortgage, has a value of approximately \$7500; three acres of land in Auburn, unencumbered, having a value of approximately \$100; three automobiles having an aggregate value of approximately \$2100; a yacht having a value of approximately \$15,000; bank deposits in Worcester, New York City, aggregating approximately \$15,000; shares of stocks, bonds and securities, including assets of Tarbox, Inc., aggregating approximately \$175,000.

MR. MASON: That being, if Your Honor please—

MR. FUSARO: I haven't finished yet. Supplementing these interrogatories there is attached hereto a list itemizing the stocks, bonds and securities. The value given to the realty including bank encumbrances thereon as of December 31, 1940. Now if Your Honor please, I will follow the Court's suggestion with respect to this list of stocks—whether we can have them incorporated in the record by Miss Quinn at her convenience, or shall I read them? They are two and a half pages here,

MR. PERMAN: I had made a suggestion, if Your Honor please, earlier in the case that to avoid an unnecessary encumbrance of the record that the record that went up to the Supreme Judicial Court, Case 792, Katharine C. Coe vs. Martin Van Buren Coe, and being the case that was recorded by the Supreme Judicial Court in 313 Mass., be incorporated by reference into the present record.

THE COURT: May I see that, please.

MR. PERMAN: This is the record (handing printed record to Court).

MR. FUSARO: I object to that, if Your Honor please. My only request referred to these particular shares of stock or items and attached to his answers to interrogatories.

(Court looks at printed record)

MR. FUSARO: Your Honor will recall that that same request was previously made.

THE COURT: I didn't recall it as to this record. I did as to the record in a later case.

MR. FUSARO: Both, Your Honor. My request is as to both.

MR. PERMAN: I think I did make the request, in Your Honor please, and if my memory serves me right I think Your Honor said you would defer a decision on that until the issue was reached involving the specific matters necessarily involved in the trial proceedings.

MR. FUSARO: To the contrary, Your Honor made a pretty definite ruling that you would not incorporate it in the record. That is a matter of record.

THE COURT: I remember of making that ruling as to his record #835. If you object to this I will exclude it.

MR. FUSARO: I have objected, and I do object.

MR. PERMAN: We haven't offered it in evidence, Your Honor. It is simply a suggestion that it be incorporated here by reference and for the purpose of reference. It seems to me to be a much simpler way of referring to the various matters therein contained.

MR. FUSARO: Well; if Your Honor please, I will proceed to finish reading.

THE COURT: I am afraid I could not accept it in that manner if there was objection. I might say it seems harmless to me, but I make that ruling because there is much there that I feel has no place in the record.

MR. PERMAN: There is much that has a bearing.

THE COURT: I think so too.

MR. PERMAN: And of course, again I say it is the simple way to do it this way, and I am merely going to be put to a lot of inconvenience and a lot of time in getting it in the way I shall have to.

MR. MASON: Now we object at this time—

MR. FUSARO: I object to Mr. Mason's interrupting me in the middle of an answer. I think I have a right to read it.

THE COURT: I think he has a right to finish, if he state he has not finished.

MR. MASON: I just want to be certain that we have an objection to the introduction of these interrogatories and answers.

MR. FUSARO: I object to Mr. Mason's carrying on in this fashion.

MR. MASON: I don't care whether you object or not; I just want it to be certain that we have our objection.

MR. FUSARO: "December 31, 1940," (reads aloud answer to and including "175 Packard Motors" without interruption)

MR. FUSARO: (continuing to read answer) "7M International Telephone 41-52." That increased a thousand.

MR. PERMAN: I say there is nothing in the answer—it is 7M.

MR. FUSARO: "100 Curtis Publishing Co. preferred."

MR. MASON: I object to Mr. Fusaro's inserting anything that appears in the answer excepting what appears in the answer, or making any comment about it as he reads it.

MR. FUSARO: May I ask the witness a question?

THE COURT: As long as you are reading the interrogatories I suggest that you read them. You may of course later ask the witness what he meant by that answer.

(Mr. Fusaro reads aloud balance of answer)

MR. MASON: Our exception, Your Honor, to the introduction of that.

THE COURT: I haven't ruled on it yet.

MR. FUSARO: If Your Honor please, may I aid the Court with the citation on it?

THE COURT: Yes.

MR. FUSARO: 69 Mass. 215 and 298-457, where interrogatories and the answers made by a party in another action were admitted for the purposes of admissions.

THE COURT: All right. (Court sends out Sheriff to procure volumes referred to)

MR. FUSARO: Anyway, to save time shall I proceed to read the other questions and answers, Your Honor, or do you desire that I wait?

THE COURT: I think perhaps we had better wait.

MR. MASON: Of course Your Honor understands we object to the materiality of this evidence on any issue involved in this hearing, and shall continue to urge that anything in evidence with reference to this man's financial condition as it existed prior to March 25, 1942 is immaterial, has been adjudicated in a prior hearing and is not open for consideration by this Court under the petition for modification.

THE COURT: I am trying to arrive at this financial condition today. Of course I think it is also important what his financial condition was

at the time the other order was made, in order that I may know on what basis it was made. You have urged that yourself.

MR. MASON: The only importance of the financial condition today, it has any bearing on the issue in this case, is its comparison with his financial condition at the time Judge Wahlstrom made his order on March 25, 1942. Otherwise this Court would be reviewing Judge Wahlstrom's order on his financial condition.

MR. FUSARO: In view of what he now says, we are willing that a transcript of the evidence with respect to this man's financial worth at the time of the previous hearing in March 1942 be given to Your Honor and considered a part of this evidence.

MR. MASON: It may not be material, Your Honor.

MR. PERMAN: Will you let us look the transcript over?

MR. MASON: It may not be material unless he goes further on his petition and shows an alteration of circumstances. Now that is our position, if anything is open on the man's financial condition.

MR. FUSARO: He has urged that before, and he has urged it this morning. We haven't, if Your Honor please, a copy of the transcript of the evidence with respect to this man's financial worth. I don't know what it is. But whatever it might be, Miss Quinn may furnish His Honor with it and it may be made a part of this record.

MR. MASON: The burden of proof is on the petitioner in this particular modification. All we urge is if the financial status is important on a petition for modification then its only relevancy can pertain to a change of circumstances between the time of the original decree and the present time. That is our position. Now I say it becomes unimportant and only clouds the issue in attempting to influence this Court improperly, to offer this evidence as to financial condition if the petitioner is not prepared to go forward and show alteration.

MR. MCKEON: May it please the Court: This is, I think, the seventh day in this trial. We have listened rather patiently to repeated arguments contrary to obvious law by counsel for the respondent, both of them. I would suggest that any further arguments by them in repetition of prior arguments addressed to Your Honor be submitted with authorities upon which they rely, in order that we may have some opportunity to adjudge whether there is any possibility of their views being upheld by law or whether they are wholly groundless in these—

THE COURT: Well, I am afraid that may only make the objections more lengthy.

MR. MASON: I think we should be required to instruct the counsel for the petitioner in the law.

MR. McKEON: You need not worry about us on the law.

(Court looks at volume brought in by sheriff)

MR. FUSARO: And #4 here, that paragraph (handing volume to Court)

THE COURT: All right, you may proceed.

MR. FUSARO: #6—

MR. MASON: Your Honor has not yet ruled on the admissibility—

THE COURT: I rule that they are admissible under those two decisions.

MR. MASON: Save our exception.

MR. FUSARO: "#6. As of September 1st, 1939, in what banks did you have deposits? How much in each? Answer:—

THE COURT: Of course you no doubt remember that you asked me to admit a whole record containing these same answers.

MR. MASON: We suggested for the convenience of the Court that instead of encumbering the record, that that record might be incorporated for reference; for the purpose of reference as to anything that might be material or introduced in evidence. We didn't ask to have the entire record, as I understand it.

THE COURT: Well, these same questions and answers are in there.

MR. MASON: They are in there and could have been incorporated for the purpose of reference, as identification. That is all we offered it for, to avoid encumbering this record and to have to save time.

MR. FUSARO: "Answer: Bankers Trust Co. approximately \$42730.36. Chase National Bank, approximately \$7,951.16; Guaranty Trust Company of New York, approximately \$44,281.56; Guaranty Trust Company, approximately \$1240.10.

MR. MASON: Our exception to the admittance of that question and answer.

THE COURT: Yes.

MR. FUSARO: "7. Have you transferred any personal property from your own name in the past three years? If so, please identify it and tell what you did with it, and why.

MR. MASON: Objection.

THE COURT: It may go in.

MR. MASON: Exception.

MR. FUSARO: "Answer: In the normal course of trading in stocks, bonds and securities I have made many transfers. I have also made deposits of cash in the account of Tarbox Inc. for the purpose of purchasing securities. 8. What is the nature, purpose and history of Tarbox, Inc.

MR. MASON: Objection.

THE COURT: That may go in. MR. MASON: Exception.

MR. FUSARO: "Tarbox, Inc. is a corporation organized for and engaged in the business of buying and selling stocks, bonds and securities."

Q. Now Mr. Coe, you have disposed of property at 6 Boynton Street, you testified—that's right is it not? A. Yes.

Q. What was the date you sold that?

A. I don't know; it was June of '44.

Q. June 1944? A. Yes.

Q. And how much did you sell that property for?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

Q. His Honor said you may answer. A. \$8500.

Q. And was there a mortgage on it? A. Yes.

Q. How Much? A. \$3000.

Q. And did the \$8500 include the mortgage, or was that in addition to the mortgage? A. The mortgage was included in the \$8500.

Q. There was no second mortgage on it? A. No.

Q. And no other encumbrances than that mortgage that you have mentioned? A. No.

Q. The property at 2 Boynton Street is still owned by you? A. Yes.

Q. That house at 2 Boynton Street is exactly the same size, type and construction as #6?

A. Well, they are different design; but there are about the same number of rooms.

Q. There is only one house in between #6 and #2? A. Yes.

Q. You have testified that you have three acres of land in Auburn?

A. Yes.

Q. What is that worth today? A. I don't know; I suppose \$100.

Q. How many automobiles have you today? A. One.

MR. PERMAN: I object.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. You disposed of two automobiles, did you? You had a total of three when you answered these, but you sold two? A. Yes.

Q. What did you obtain from the sale of those two automobiles?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: I wouldn't know.

Q. Well, you sold them? A. But that was three years ago.

Q. Whatever it was, how much did you get, sir?

A. I think I got \$800 for one and \$900 for the other.

Q. What kind of an automobile do you have now? A. Cadillac.

Q. What year is it? A. '41.

Q. What is its value today?

MR. PERMAN: Wait. I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: About \$1500.

Q. And you have a yacht now, have you? A. Yes.

Q. That is the same yacht that you have described in the answers to your interrogatories? A. Yes.

Q. And have you an account in the Bankers Trust Co.?

MR. PERMAN: I pray Your Honor's judgment.

MR. MASON: Is this for the purpose of showing the assets or conversion of assets? I don't know what this is.

THE COURT: What could be the purpose except to show his present wealth?

MR. MASON: Has Mr. Fusaro helped us any by introducing in evidence the assets he received in 1930 and now showing conversion of automobiles into cash? Does that help us in any way in knowing this man's financial condition?

THE COURT: I should certainly think so.

MR. MASON: All right, if Your Honor thinks it is material.

MR. PERMAN: All that is introduced is one form of assets for another.

MR. McKEON: Wait for your time for arguments.

MR. MASON: I object to it.

THE COURT: It may go in. MR. PERMAN: Exception.

Q. What is the amount of your deposit in the Bankers Trust Co.?

A. Now?

Q. Yes. A. About \$1000.

Q. Have you the records of your account in the Bankers Trust Co.?

A. Yes.

Q. Produce them. A. I haven't got them on my person.

MR. FUSARO: I call Your Honor's attention to Exhibit 6, the summons to this respondent that was served on Jan. 20, 1945, especially this part of it, "And bring with you all records, including cancelled checks, stubs, receipts and all memoranda relating to your real and personal property or to any other things that are in relation to these cases."

Q. Did you bring in all those records, sir, that you were requested to bring with you?

MR. PERMAN: Objection.

THE COURT: He may answer.

WITNESS: No.

Q. Why didn't you comply with this summons, sir?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: If you ask why didn't you bring those records, you may have it.

Q. Why didn't you bring all records mentioned in the summons?

MR. PERMAN: Wait, I object.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: You didn't mention specifically what to bring in.

Q. That is your answer, is it? A. Yes.

Q. Now sir, I ask you to produce the account with the Bankers Trust Co. your bank book and your checks, and your monthly statements. You will do that, won't you? A. Yes sir.

Q. All right. Now what have you done with the money that was reported in the Bankers Trust Co. as amounting to \$42,730.36 on May 3, 1941?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I bought stocks with it.

Q. And you bought the stocks in whose name?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: In the Tarbox.

Q. Tarbox, Inc., that's the New York corporation, that right?

A. Yes, and myself.

Q. And in your name too? (Witness nods head)

Q. You shake your head. You have got to answer.

A. Well, I don't know; I can't keep record over three, four or five years.

Q. I didn't ask you that. This money you say you withdrew from the Bankers Trust Co. you say you bought stock for Tarbox, Inc. the New York Corporation, with that money, is that right? A. As far as I know.

Q. You have records to show that, have you? A. I don't know.

Q. Did you buy any stocks in your own name in addition to having purchased stocks in the name of Tarbox Company? A. I think so.

Q. You would have a record of that, wouldn't you? A. I think so.

Q. I ask you to produce the records of the stocks so purchased, sir.

A. What were they?

Q. Don't ask me any questions. You have an account in the Chase National Bank? A. Yes.

Q. What is the amount of that account in Chase National Bank?

A. \$1000.

Q. And have you the records of your account with the Chase National Bank? A. Not with me.

Q. Then I ask you to produce that account, together with the checks and your monthly statements and all other memoranda referring to that account.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Now what did you do with the amount in the Chase National Bank?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: I don't know.

Q. You don't know? You have no recollection whatsoever?

A. Well, I know I have invested it.

Q. You know you invested it. That is, you took what money you have in Chase national Bank excepting about \$1000 and you invested it in stocks and bonds? A. As far as I know.

Q. And you purchased the stocks and bonds in whose name?

A. I think in that corporation and mine.

Q. Both names? A. Yes.

Q. And you refer to Tarbox Company, the New York corporation, that right? A. Yes.

Q. And you had \$44,281.56 in the Guaranty Trust Co. of New York. How much is there there now?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: I think about \$1100.

Q. Have you the records with respect to that account? A. I think so.

Q. Produce them. A. I can't.

Q. You have not got them here? A. No.

Q. I ask you to produce the account with the Guaranty Trust Co., your checks and your statements and other memoranda relating to that account, sir.

MR. MCKEON: The Guaranty Trust Co. of New York.

Q. Yes, the Guaranty Trust Co. of New York I refer to.

A. If I can find them.

Q. Well, you have them, haven't you? A. I don't know.

Q. Nobody else has them, have they?

A. They may have been destroyed.

Q. Oh, you may have destroyed them? A. Yes.

Q. When? A. I don't know.

Q. Do you mean that, sir?

A. Well, I can't keep the whole record in there.

Q. Did you destroy records pertaining to the account of the Guaranty Trust Co. of New York in which you at one time had \$44,281.56?

A. I think so.

Q. Well, when do you think you destroyed them? A. I don't know.

Q. Was it since the last hearing?

A. Must be at the time they were issued, a few months after.

Q. What do you mean by the time they were issued?

A. I mean a few months after.

Q. What? A. Few months after.

Q. After what? A. After they were cashed.

Q. That you destroyed your checks, you mean? A. Yes.

Q. So that you have no checks to show what you did with that money?

A. Well, I have the record of the stuff that was bought.

Q. You have? A. Yes.

Q. Then you purchased with the money that you withdrew stock, is that right? A. Yes.

Q. And bonds? A. Yes.

Q. In whose name? A. I don't know.

Q. I am asking you in whose name did you buy the stocks and bonds?

A. I wouldn't know.

Q. You wouldn't know. Did you buy them in the name of Tarbox Company of New York, the New York corporation? A. Some of it.

Q. Did you buy some of those stocks in your name? A. I don't know that.

Q. Well, you have records to show what you did with that money?

A. I don't know.

Q. You don't know? A. No.

Q. Well, you bring whatever records you have with respect to that situation, won't you? You shake your head. You have got to answer, please. A. If I can.

Q. Now you have an account in the Guaranty Bank & Trust Co. of Worcester, have you? A. Yes.

Q. How much have you in that account? A. Well, forty-three, forty-three hundred.

Q. And have you any other accounts in any other banks? A. Yes.

Q. What banks? A. Mechanics National.

Q. How much have you in the Mechanics National?

A. About twenty-five; twenty-five hundred.

THE COURT: Is that of Worcester?

WITNESS: Worcester.

Q. And that is in your name, is it? A. Yes.

Q. Have you other accounts? A. No.

Q. Are there any accounts in banks, wherever the same may be located, that belong to you but in somebody else's name? A. No.

Q. Since your marriage to Mrs. Coe #2, have you given her any property?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. You may answer, His Honor says. A. No.

Q. Have you given her any money? A. Yes.

Q. How much?

MR. MASON: I object.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: Well, I give her what she wants.

Q. Well, how much have you given her? A. Well, \$25 a week, or any amount she asks for. It varies.

Q. \$25 a week or \$2500? A. No.

Q. What is it? A. It varies.

Q. Well, have you got records of the amounts of money you have given to your wife #2? A. No.

Q. You give her the money in cash or by check? A. Both.

Q. Will you produce those checks?

MR. PERMAN: Well, Your Honor—

THE COURT: I take it from his testimony that he gave her about \$25 a week, or some such sum for spending money; and he doesn't testify that he gave her any substantial amount.

MR. FUSARO: Well, I assume Your Honor is correct on that assumption. I simply wonder if I might check on it.

Q. Well, have you given your wife #2 any amounts in addition to \$20 or \$25 a week? A. No, not outside of expense money.

Q. You mean expenses for running the house? A. Yes.

Q. In addition to that have you given her any money or conveyed any property to her? A. No.

Q. You understand my question? A. Yes.

Q. Have you purchased any stocks in her name? A. No.

Q. Have you conveyed any of your interest in Tarbox Company, the New York corporation, to Mrs. Coe #2? A. No.

Q. Now I would like to have you bring along your records of your account in the Guaranty Bank & Trust Co. and also in the Mechanics National Bank, sir. You understand my question? A. Yes.

Q. All right. Now you own the Tarbox Realty Co.? A. Yes.

Q. And since the incorporation of Tarbox Realty Co. which occurred in May of 1941, according to the certificate from the Commonwealth of Massachusetts, what property have you transferred or conveyed to that corporation?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: None.

Q. And what property outside of the real estate at 30 Forest Street does that corporation own or control?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I think it is a lot in the rear of seven acres.

Q. Seven acres in the rear of 30 Forest Street? A. Yes.

Q. That is all in that deed that was delivered to you at the time you purchased that property? A. No.

Q. Separate deeds? A. Separate.

Q. Have you got the deeds? A. No.

Q. You understand my questions? A. Yes.

Q. That you say you purchased in the name of Tarbox Realty Co. two parcels of land at two separate, distinct times? A. Yes.

Q. You have two deeds, then? A. Yes.

Q. When did you buy this land in the rear of 30 Forest Street?

A. Sometime in '44.

Q. And you purchased that and placed it in the name of Tarbox Realty Co.? A. Yes.

Q. Now, what did you pay for that?

MR. PERMAN: I object.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: \$6000.

Q. And what did you pay for 30 Forest Street?

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

WITNESS: \$13,000.

Q. That is in cash, is it? A. Yes.

Q. No encumbrances? A. No.

Q. Now do you own or control any other corporations outside of the Tarbox Company of New York and Tarbox Realty Co. of Massachusetts?

A. No.

Q. And have you a list of all the stocks, bonds and securities in your own name, sir? A. No.

Q. Do you own stocks, bonds and securities in your own name?

A. Some.

Q. And what are they?

MR. PERMAN: Well, I pray Your Honor's judgment.

THE COURT: How else are we going to arrive at his financial condition? Do you know any other way?

MR. PERMAN: Yes, I could make some suggestion, if Your Honor please.

THE COURT: Well, I rule that this is competent.

MR. PERMAN: Exception.

(RECESS. HEARING RESUMED)

Q. Mr. Coe, you have a deposit in the Nevada bank, have you not?

A. Yes.

Q. How much have you there? A. \$1100.

Q. Well, didn't you understand me before recess when I asked have you deposits in any other banks, and you said "No." Do you remember?

A. I thought you meant this state.

Q. Now you tell us what deposits you have in any other banks in the state of Nevada except this bank where you have \$1100:

A. That's the only one.

Q. What is the name of it? A. First National Bank of Nevada.

Q. And that's the account that you opened up when you went to Nevada in June 1942? A. Yes.

Q. Will you produce your records in connection with that account, sir?

A. I haven't got it.

Q. Where are they? A. I don't know.

Q. Where are the checks, sir? A. I don't know.

Q. Didn't you keep them? A. No.

Q. You destroyed them? A. I think yes.

Q. You destroyed them for a purpose, didn't you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Well, have you any checks with respect to that Nevada bank account? A. No.

Q. Not a single one? A. No.

Q. But you did issue checks on that account? A. Yes.

Q. And where are they? A. I don't know; I haven't got them.

Q. Who has them? A. Nobody has them.

Q. Didn't you keep them? A. No.

Q. Well, what was done with them? A. They were destroyed.

Q. You destroyed them? A. Yes.

Q. You destroyed evidence, didn't you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, the word "evidence" may go out, if you wish.

MR. FUSARO: I withdraw it.

Q. Have you any accounts in any banks in any other state of the United States of America? A. No.

Q. Have you accounts in any bank not in this country? A. No.

Q. You understand my question now. What stocks do you own in your own name? A. What's that again?

Q. What stocks do you own in your own name?

A. I own what is on that list you just gave.

Q. Well, that is in the name of Tarbox Co. of New York, is it? Is that what you refer to? A. No, I refer to the list that I gave in my interrogatories.

Q. You own that? A. Yes.

Q. But in addition to that list you own other stocks and bonds, and debentures, do you not? A. No.

Q. Well, you purchased some in addition to that list that you gave in answer to that interrogatory? A. No, only with that cash.

Q. That's what I say. You have purchased in your own name since a total of what amount in stocks and bonds? A. I don't know.

Q. Well, you have got a record, haven't you?

A. I don't know; I don't think so.

Q. You keep a record of all the stocks and bonds in your name?

A. For the time being, no.

Q. What do you mean by that?

A. I mean I have just the record, and that's all.

Q. The record of what? A. Of the bonds and of the stock.

Q. Well, you will produce that, won't you? A. If I can.

Q. You have it? A. I'm not sure.

Q. Has anybody else got it? A. I don't know.

Q. Do you entrust your records with anybody else? A. Yes.

Q. Who has them? A. My accountant.

Q. Oh, your accountant. Who is your accountant? A. John O'Connor.

Q. And he is a Worcester man, is that right? A. Yes.

Q. The stocks and bonds were purchased and sold through whom?

A. Paine & Webber.

Q. Any other firm? A. Yea.

Q. Who? A. E. F. Hutton Company.

Q. Of where? A. New York.

THE COURT: May I interrupt at this point?

MR. FUSARO: Yes.

THE COURT: You said something about Tarbox Realty?

WITNESS: Yes.

THE COURT: Some few days ago, about buying and selling stocks?

WITNESS: Yes, Your Honor.

THE COURT: I was wondering then if that meant for customers or just for yourself and the corporation.

WITNESS: No, that was for the corporation.

THE COURT: Tarbox Realty is not a member of any brokerage house or New York Stock Exchange?

WITNESS. No; that is a real estate.

THE COURT: And the other company, Tarbox, Inc.?

WITNESS: That's right, Tarbox, Incorporated.

THE COURT: You don't buy for customers through Tarbox?

WITNESS: No, Tarbox buys from a broker.

THE COURT: For the corporation itself?

WITNESS: Yes.

THE COURT: Not for customers?

WITNESS: No.

THE COURT: All right. I didn't know at the time.

Q. And in addition to Paine & Webber and Hutton Company, what other firms do you purchase and sell bonds, stocks and securities through?

A. None.

Q. Only these two firms, that right? A. Yes.

Q. And do you have the accounts with Hutton Company? A. Yes.

Q. I ask you to produce these. Have you got the accounts with Paine & Webber? A. Yes.

Q. I ask you to produce those, sir. Is there any other person, firm or corporation in New York through whom you purchased and sold bonds, stocks and securities? A. No.

Q. Any other person; firm or corporation in Massachusetts with whom you buy and sell bonds, stocks and securities? A. No.

Q. Those are the only two firms that you have been doing business with from 1939 right up to date, that right? A. Yes.

Q. No other person, firm or corporation with respect to the purchase and sale of securities? A. No.

Q. You understand the question? A. Yes.

MR. FUSARO: I guess that is all.

MR. MASON: I move that all the evidence with reference to this man's financial condition be stricken out insofar as it relates to any petition for modification of the decree, or any other issue in this case.

THE COURT: That motion is denied.

MR. MASON: Exception.

MR. FUSARO: Do you desire to examine this witness?

MR. PERMAN: You are all through with him?

MR. FUSARO: Yes.

Q. BY MR. PERMAN: In 1942 were you as well off financially as you were in 1941? A. No.

Q. In 1943 were you as well off financially as you were in 1941?

A. No.

Q. In 1944 were you as well off financially as you were in 1941?

A. No.

Q. Since you received your money that was inherited from your father and your grandmother, have you inherited any money from any other source? A. No.

Q. Is it true that your income is mostly from interest and dividends on stocks, bonds and securities? A. Yes.

Q. Are you as well off financially at this time as you were in March 1942. A. No.

Q. What was your gross income, as best you can recall, for the year of 1941? A. \$8500.

Q. What was it in 1940? A. \$10,000.

Q. What was it in 1939? A. \$11,000.

Q. What was your gross income in 1942? A. I think it was \$7800.

Q. What was your gross income in 1943? A. About \$8000.

Q. Have you computed the figures for 1944? A. No.

Q. You haven't got those fully computed? A. No.

Q. Now since March of 1942 have you had some unusual expenses?

A. Very unusual.

Q. In September of 1942 you paid the sum of \$7500 under the property settlement contract, didn't you? A. Yes.

Q. To Katharine C. Coe? A. Yes.

Q. And in September of 1942 you paid the sum of \$1000 for her counsel fees? A. Yes.

Q. Did you pay counsel fees to Mr. Bible out there? A. Yes.

Q. What was the amount of these counsel fees? A. \$2500.

Q. As a result of the litigation that you have been involved in, have you incurred counsel fees to me? A. Yes.

Q. And approximately what did you pay me in counsel fees?

A. Well, about \$5000.

Q. In the course of your dealings in stocks, bonds and securities, were there occasions when you made sales? Did you sell? A. Yes.

Q. Have you sold from time to time? A. Yes.

Q. And in the course of your trading is it true that the amount of cash that you have at times changes? A. Radically.

Q. You have a lot of cash on hand at some times, and at other times when you buy the securities, you use that money to buy the securities?

A. Yes.

Q. In order to make the payment of \$7500 to Katharine C. Coe did you then dispose of some securities? A. Yes.

MR. PERMAN: That is all.

MR. FUSARO: If I may have a moment, if Your Honor please, to confer with counsel?

THE COURT: Yes.

MR. FUSARO: (after conferring with Mr. McKeon) No questions.

MRS. KATHARINE C. COE testified as follows:

THE COURT: Were you sworn the first day?

WITNESS: No sir. (Court swears witness)

Q. BY MR. FUSARO: Would you rather be seated? A. I would.

(Witness is seated)

Q. What is your name? A. Katharine Coe.

THE COURT: Is that spelled with a C or K?

WITNESS: K-a-t-h-a-r-i-n-e.

Q. And you live where? A. 3 Midland Street.

- Q. That is in Worcester, is that right? A. Yes.
- Q. You have been residing at 3 Midland Street how long?
- A. Since last June.
- Q. That would be June 1944? A. Yes.
- Q. And prior to June 1944 where did you reside?
- A. 32 Howland Terrace.
- Q. Will you keep your voice up. Now how old are you, Mrs. Coe?
- A. Thirty-six.
- Q. And you were born where? A. New York City.
- Q. And when did you leave New York? A. When I was twelve or thirteen years old.
- Q. And you came on to Worcester to live? A. Well, I lived in Manchester, N. H.
- Q. And from Manchester, N. H. you came to Worcester? A. Yes.
- Q. You arrived in Worcester what year? A. 1927.
- Q. And you lived here with your family, is that right? A. Yes.
- Q. Now you were married to Mr. Coe on May 16, 1934, is that right?
- A. That's right.
- Q. And you were married in New York City? A. Yes.
- Q. And prior to your marriage, where were you living?
- A. 105 Highland Street.
- Q. Highland Street is the street that adjoins the Court House here?
- A. Yes.
- Q. Runs off Lincoln Square in a westerly direction, that right?
- A. That's right.
- Q. And after your marriage to Mr. Coe did you live as husband and wife in New York, or did you come back to Worcester?
- A. We went on a honeymoon.
- Q. Well, after the honeymoon? A. We came back to Worcester.
- Q. And where did you make your home in Worcester?
- A. 6 Boynton Street.
- Q. And during the time that you were living with Mr. Coe, was there any other residence but 6 Boynton Street, Worcester, Mass.?
- A. No, that's the only residence.
- Q. And that house consisted of how many rooms? A. Seven rooms.
- Q. Was that fully furnished? A. Yes, it was.
- Q. The seven rooms, that right? A. Yes.

Q. Now Mrs. Coe, at any time after your marriage to Mr. Coe had you ever lived as husband and wife in New York City or in any city or town in the state of New York?)

THE COURT: Pardon me, I didn't get that. (Stenographer reads aloud question)

WITNESS: Well, we would go to New York, yes.

Q. My question is, did you ever live with Mr. Coe in New York City or any city or town in New York State after your marriage? A. No.

Q. At some time, Mrs. Coe, did you discover that Mr. Coe had an apartment in New York? A. Yes, I did.

Q. And when did you discover that? A. I believe it was in 1940.

Q. And at that time you and Mr. Coe were living where?

A. 6 Boynton Street.

Q. And do you recall when is the last date that you lived at 6 Boynton Street?

A. I think it was January 14, 1941; I am sure of the month but not the day.

Q. January 1941 you are sure of, but the exact date you may not be sure about? A. Yes.

Q. And what were the circumstances under which you left 6 Boynton St.? A. Well, Judge Atwood asked me to leave 6 Boynton Street.

Q. And up to that time was 6 Boynton Street the residence of yourself and Mr. Coe? A. It was.

Q. And as far as you knew then did Mr. Coe have any other residence but 6 Boynton Street, Worcester?

MR. PERMAN: I object to that.

WITNESS: He did not.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: He did not.

Q. Now you recall the proceedings that occurred in this Court Room in March of 1942? A. I do.

Q. And following the decision on your petition for separate maintenance which occurred on March 25, 1942, where did you reside?

A. 32 Howland Terrace.

Q. And whom did you reside with?

A. With my sister and her husband.

Q. What is the name of your sister? A. Mrs. Russell Bird.

Q. And did Mr. and Mrs. Bird have children at that time? A. Yes.

Q. How many? A. Two.

Q. Now when you were asked by Judge Atwood to leave 6 Boynton St. where did you go to reside? A. 32 Howland Terrace.

Q. And from that date in January 1941 you remained there until when? A. June 1944.

Q. That is, in June 1944 you moved from 32 Howland Terrace to your present address, is that right? A. That's right.

Q. Where did Mr. and Mrs. Bird move to? A. Princeton.

Q. And that is a town some fifteen or twenty miles outside of Worcester, that right? A. That's right.

Q. Now after the decree was entered by the Court on March 25, 1942, you say you continued to reside at 32 Howland Terrace, is that right?

A. That is correct.

Q. At any time in the month of April 1942 did you leave Worcester and go to New York City or any place in New York? A. I did not.

Q. And the specific date that has been in evidence with respect to a certain incident that occurred in New York City was April 14, 1942, and I ask you if on that date you were in New York City or any other part of New York? A. I was not.

Q. And where were you during the month of April 1942?

A. I was right here in Worcester, and I was quite ill; less than three weeks after the previous trial.

Q. And you say that at no time from the date of the trial throughout the entire month of April 1942 had you left Worcester?

A. That is correct.

Q. For New York, is that right? A. That is right.

Q. And at no time during that period of time were you in New York, is that right? A. That's right.

Q. Who resided at 32 Howland Terrace in addition to those persons that you have already mentioned from the time that your trial began in March 1942? A. My sister, Mrs. Moffit, and my brother.

THE COURT: When you say "my sister" do you mean Mrs. Bird?

WITNESS: No, Mrs. Moffitt.

THE COURT: Well, that is in addition to Mrs. Bird?

WITNESS: Yes.

THE COURT: Mrs. Moffitt?

WITNESS: Yes.

THE COURT: And who else?

WITNESS: My brother.

Q. And Mr. and Mrs. Bird? A. Yes.

THE COURT: And the brother is?

WITNESS: My brother, Edwin Collins.

THE COURT: C-o-l-l-i-n-s?

WITNESS: That is right.

THE COURT: And Mr. and Mrs. Bird?

WITNESS: Yes, Your Honor.

Q. By the way, what are the ages of those children, and I refer to the children of Mr. and Mrs. Bird?

A. I think the boy is four and the girl is two or a little older, I guess.

Q. And your brother resides where now? A. On Boynton Street.

Q. He is living on the same street where you formerly lived?

A. That's right.

Q. Now Mrs. Harriet Moffitt resided where prior to the trial in 1942?

A. In Cambridge.

Q. And she was with you during the trial, is that right?

A. That's right.

Q. And she also testified in your behalf at that previous trial?

A. That's right, yes, she did.

Q. And who are you living with now?

A. I am living with Harriet Moffitt, my sister.

Q. From the date of your previous trial in March 1942, when was it that you first saw Mr. Coe, and where?

A. In Reno, Nevada, September 19th, 1942. Excuse me, I mean to say Carson City, that is where the trial was held, instead of Reno.

Q. C-a-r-s-o-n City, that right? A. That's right.

Q. On that date, September 19th, 1942, did you have any talk with Mr. Coe? A. Yes, I did.

Q. Now from the time—

THE COURT: From the date of the previous trial you say the first time you saw Mr. Coe was in Carson City, Nevada on September 19, 1942, is that correct?

WITNESS: Yes, Your Honor.

Q. And from the date that the decree was entered on March 25, 1942, up to September 19th, 1942, was that the first time that you had talked with Mr. Coe? A. Yes.

Q. Now Mrs. Coe, while you were residing in Worcester following the trial in March 1942, did you receive some papers in connection with the proceeding that was started by Mr. Coe? A. I did.

Q. And where did you receive those papers?

A. At 32 Howland Terrace.

Q. And did some person hand them to you? A. Yes.

Q. Do you know who did? A. No, I don't.

Q. And do you recall when it was that you were handed these papers with respect to the proceedings commenced by Mr. Coe?

A. I believe it was sometime the first week of August; I don't know the date.

Q. You refer to August 1942, that right? A. That is correct.

Q. And did you know that Mr. Coe had left Worcester, Massachusetts, for Nevada prior to the time that you received these papers?

A. No, I did not.

Q. And by the way, have you the papers that were served on you?

A. No, I haven't.

Q. What did you do with them, and I refer to the papers that were served on you? A. Oh, I tried to get in touch with Mr. McKeon and I was unable to.

Q. No. I didn't ask you that. I asked you what did you do with the papers that were served on you. What did you do with them? Have you got them? A. No.

Q. What happened to them, that's what I want you to tell the Court. Who has them, in other words, the divorce papers that were served on you?

A. The summons?

Q. The summons, yes, that's right. A. I think I gave it to you.

Q. You think you did? A. Yes.

Q. Well, at some time did I give them back to you? A. I think maybe you did.

Q. But you are not sure? A. No, I'm not sure; I'm sorry.

Q. Well, let me remind you on that. Were they taken along with you to Nevada after you consulted me, or not?

A. I can't be sure about that paper.

Q. All right. But you haven't got it now anyway? A. No, I haven't.

Q. Well, after you received that summons, and that is what it was, in connection with the proceedings started by Mr. Coe, what did you do?

A. Tried to get in touch with Mr. McKeon but he was ill, and I waited about a week or so and I still couldn't reach him; so I went down and I talked with you.

Q. Mr. McKeon and I were your counsel in the previous hearing in March 1942, is that right? A. That is right.

Q. And when you consulted me, what occurred? A. Well—

MR. PERMAN: The conversation?

MR. FUSARO: Yes. Do you object to it?

MR. PERMAN: May I have a minute? (Confers with Mr. Mason) I object to it.

MR. FUSARO: I withdraw it, Your Honor.

Q. I would like to have you fix the time when you consulted me as best you can possibly remember.

A. Probably between the 14th and 17th of August 1942.

Q. About the middle? A. Yes.

Q. What did you do after you consulted me?

A. I went out to Reno, Nevada.

Q. And when did you arrive in Reno, Nevada? A. August 25th, 1942.

Q. Now when you left Massachusetts to go to Nevada, what was your purpose in going to Nevada?

MR. PERMAN: Objection.

MR. FUSARO: I press it.

THE COURT: She may answer. MR. PERMAN: Exception.

Q. His Honor said you may answer.

A. I went out there to seek counsel and to get a divorce.

MR. PERMAN: Wait a minute.

THE COURT: I ruled that she might answer.

Q. Go ahead and finish what your purpose was. You went out to seek counsel and get a divorce?

A. Yes, to defend myself against Mr. Coe's action for divorce.

THE COURT: Now which is which? Do you understand my question? You said I went out to Nevada to seek counsel and to get a divorce. And then you answered later "and to defend myself." Do you mean all three of those?

WITNESS: I could be both, yes.

Q. We want you— A. Well, I went out for a divorce.

Q. And also to defend yourself, is that right? A. Yes.

Q. And when you left here did you have some documents?

A. Yes, I had photostatic copies of what had taken place in the trial March 1942.

Q. I show you these documents and ask you if those are the documents that you took along with you? A. Yes, that is what I took with me.

MR. FUSARO: I offer them. They are certified copies. (Hands same to Messrs. Perman and Mason) I do not desire to encumber the record, but just simply as showing that she had these photostatic copies.

THE COURT: Well, I don't think it is necessary to put them all in.

MR. FUSARO: Then I will just simply withdraw it; but they are available. I withdraw my offer. They are all the same as we have got in the record.

MR. PERMAN: Well, why don't you really identify it as being the same petition and pleadings contained in the various proceedings between the parties?

MR. FUSARO: Well, they are photostatic copies of the proceedings between the parties?

MR. FUSARO: Well, they are photostatic copies of the proceedings that took place with respect to Mrs. Coe's petition for separate maintenance and I think Mr. Coe's libel for divorce.

THE COURT: And all papers pertaining to that action or those two actions?

MR. FUSARO: I assume so. I haven't checked them for some time. Yes, they are all there; they are all simply copies.

Q. Well now, Mrs. Coe, you arrived in Reno, you said? A. Yes.

THE COURT: Was it Reno or Carson City?

WITNESS: The trial was at Carson City, but I engaged counsel at Reno?

Q. You went to Reno, as I understand it? A. That's right.

Q. Where did you stay? A. El Cortez Hotel.

THE COURT: How do you spell that?

WITNESS: E-l C-o-r-t-e-z. I stayed there a few days, and then I took a room up on 128 Liberty Street.

Q. When was the first time that you saw counsel? A. The next day, August 26th.

Q. That is 1942, that right? A. 1942, that's right.

Q. By the way, did you go with somebody, or were you alone?

A. I was alone.

THE COURT: That was August 28, you said?

WITNESS: No, August 26th.

Q. August 26th represents the day you first saw counsel?

A. That's right.

Q. You stated you arrived on August 25th? A. That's right.

Q. Before engaging counsel what did you do?

A. I went to the Chamber of Commerce and I asked them for the names of several lawyers up there.

Q. And who was the first lawyer you consulted?

A. I talked with a Mr. Merrell.

Q. And did you engage him? A. No, he was not able to take the case.

MR. PERMAN: Well—

MR. FUSARO: What is the objection?

Q. All right; but you did not engage him? A. No.

Q. Then whom did you see? A. I saw a Mr. Edwards.

Q. What is his full name? A. I don't know.

Q. Had you ever seen this particular lawyer before that day? A. No.

Q. And by the way, Mrs. Coe, had you ever been in the State of Nevada in all your life prior to that time? A. No, sir.

Q. August 25, 1942, was the first time you were ever within the state of Nevada, that right? A. That is correct.

Q. And alone? A. That is correct.

Q. Well now, where is the office of Mr. Edwards located?

A. Virginia Avenue in Reno.

Q. Do you know the number? A. No.

Q. Or the name of the building? A. No, I do not.

Q. You tell us now what took place between you and Mr. Edwards.

What you said and what Mr. Edwards said.

MR. PERMAN: Objection.

THE COURT: Well, I will exclude it.

MR. FUSARO: If Your Honor please, we are prepared to show that there were dealings between counsel and client which were irregular and show a betrayal of trust and confidence, and that she was given certain advice on a later date much different than had been given on the first con-

ference, and the course of dealings following that first conference from which Your Honor may draw inference that these proceedings that occurred in Nevada were quite irregular and constitute fraud. We have some evidence with respect to that.

THE COURT: And do you mean to go further and show that the respondent was connected with that fraud?

MR. FUSARO: We will show by circumstances from which a reasonable inference may be drawn that there was that connection. The fact that Mr. Coe paid Mr. Edwards \$1000 without any knowledge on the part of Mrs. Coe #1 or without having at any time prior to the granting of the divorce imparted any information about that, together with other circumstances is some evidence, I say, of that fact.

THE COURT: You may have it. MR. PERMAN: Exception.

MR. FUSARO: And I also desire to offer it on the additional ground, if Your Honor please, with respect to domicile of this witness, and that there was information imparted to Mr. Edwards with respect to her residence prior to her entry into the state of Nevada both with respect to this witness and to Mr. Coe's residence. I think I ought to have it on both grounds.

THE COURT: You may have it on both grounds.

MR. PERMAN: Exception.

Q. You tell what took place.

A. Well, I told Mr. Edwards that I was out there to defend myself against Mr. Coe's action for divorce, that he was not entitled to one, but I was the one who wanted the divorce. That Mr. Coe's petition for divorce had been dismissed here in Massachusetts and that I was awarded a separation decree. I showed him the photostatic copies that I had brought with me and he told me that everything would be all right, not to worry. And he asked me to sign a paper, which I did. He told me he would call me in a few days.

Q. Now Mrs. Coe, did you tell Mr. Edwards what your residence was?

A. Yes, he knew where I came from, Worcester, Massachusetts.

Q. And did you explain to him Mr. Coe's residence?

A. Yes, I told him.

Q. What did you say to him about Mr. Coe's residence? A. I said—

MR. PERMAN: I object. Wait a moment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I said he had always lived in Worcester, Massachusetts.

Q. That paper that you signed was what? A. I don't know.

Q. What was said to you about affixing your signature to the paper prior to signing it?

MR. PERMAN: I object.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, he just asked me to sign after he told me everything would be all right and not to worry, and he asked me to sign the paper.

Q. And you signed it? A. I signed it.

Q. Was the contents of the paper explained to you by Mr. Edwards?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No, it wasn't.

Q. Your answer is "No"? A. It wasn't.

Q. Then you returned to the hotel, did you? A. Yes, I did.

Q. And what occurred next?

A. Well, he called me about the 28th of August and I went down to his office.

Q. Now who called you? A. Mr. Edwards called me.

Q. And he called you where? A. At the hotel.

Q. There was a telephone call put in by Mr. Edwards, that right?

A. That's right.

Q. Did you talk with Mr. Edwards?

A. He asked me to go down to the—

Q. My question is, did you talk with Mr. Edwards?

A. On the telephone?

Q. Yes. A. Yes, I did.

Q. And in response to that telephone conversation what did you do?

A. I went down to his office.

Q. Mr. Edwards' office, so there won't be any question about it?

A. Mr. Edwards' office.

Q. You tell us what took place then.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, he asked me how much money I had. I told him \$1500 was everything I had. He then said we would have to have a trial and all the evidence heard again and it would take about a week. He said I didn't have money enough to cover it. In addition to this he said that the Judge

in Carson City was very liberal minded and never denied a divorce. He said if Mr. Coe was granted a divorce that I would have to appeal to the Superior Court of Nevada. I told him I had an appeal pending in Massachusetts, and he smiled and he said, "Well, we are in Nevada now." Then he said he would get in touch with Mr. Bible, Mr. Coe's attorney, and that he would call me in a few days. So I left.

Q. Do you recall anything further that he said on that day?

A. No, not on that day.

Q. You have given us what you recall of the substance?

A. Yes, as far as I can remember.

Q. When you first saw Mr. Edwards had he made any mention of money to you?

MR. PERMAN: Objection. Wait a moment. Wait until His Honor rules.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No, he didn't; he just said everything would be all right.

Q. This was the first time he mentioned it, on that second occasion?

A. Yes.

Q. Well, what did you do after that and where did you go?

A. I went back to the hotel.

Q. And you remained in the hotel? A. Yes.

Q. And was another call put in by Mr. Edwards at some time?

A. Yes.

Q. When? A. The first week in September.

Q. So that from about August 28 up until the first week of September you did not hear from Mr. Edwards? A. No.

Q. Either by telephone or by letter, or any other method, that right?

A. No, I didn't hear from him at all.

Q. All right. What happened on that day?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, he said he had arranged a settlement for me, that Mr. Coe offered me \$7500 and \$35 a week for life if I did not marry, and \$35 a week for five years if I did marry. He said "I know it is very small in proportion to Mr. Coe's wealth, but what can you do? You haven't the money to fight it. In addition to this," he said, "there is a law in Nevada where two people who don't live together for three years, that is grounds

for divorce, regardless of the fact that one may have a separation decree from another state." So he was trying to get me to sign some papers, but I left. I went back to the room, and I was quite ill for about a week or ten days, and he kept calling me and calling me, leaving messages there for me to get in touch with him; but I was unable to do so. And finally I went back; I think it was about September 16th, and he brought in his partner, Mr. Withers, and they both started talking to me, telling me that my back was to the wall, that I had no choice, that Mr. Coe was never going back to Massachusetts to live. Well, in the end I guess they won, because I signed some papers there. They seemed very anxious for me to sign, and on September 19th he drove me to Carson City, just about fifty miles away, and there was a trial, divorce trial at Carson City.

Q. Well, let me ask you some questions so that we will have it pretty clear. This conversation that you say referred to settlement, what was it you said again the first time?

A. He said that he had arranged a settlement.

MR. PERMAN: One moment. Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: That he had arranged a settlement for me.

Q. Will you please fix the date as best you possibly can?

THE COURT: The date of what?

MR. FUSARO: Of this conversation, if Your Honor please.

WITNESS: That day, the third time, I guess it was about the first week in September.

Q. Well, before that conference which took place the first week in September 1942, had there ever been any mention of a settlement?

MR. PERMAN: Objection.

WITNESS: No.

THE COURT: She may answer. MR. PERMAN: Exception.

Q. Had you, Mrs. Coe, said anything to Mr. Edwards whereby a settlement had been suggested or indicated?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: No.

Q. And you say that after that conference the first week in September you took sick? A. Yes, that's right.

Q. And were you under the care of a doctor? A. I was.

Q. Who was the doctor who treated you? A. I don't know his name. They called Mrs. Sutherland at 128 Liberty Street and she called a physician.

Q. You had never seen that doctor in your life before? A. No.

Q. Were you confined to your bed thereafter? A. Yes.

Q. For how long? A. About a week or ten days.

Q. And during that week or ten days how often did Mr. Edwards call?

A. Oh, every day.

Q. And were you able to talk to him? A. No.

Q. Can you tell us what your condition was following this third conference?

A. Oh, I guess I went all to pieces. I had very severe abdominal pains and couldn't eat and I had spells of choking, I suppose it was nerves, and couldn't sleep.

Q. I want to ask you if there was at that conference any mention about being stranded in Nevada and working your way as a dish washer?

MR. PERMAN: Objection.

THE COURT: May I have the question? (Stenographer reads question)

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: Well, he didn't paint a very pretty picture. He said I didn't look very strong and if I was smart I would take this money, that I had no chance, that I wouldn't have money even to go back to Worcester if I spent it on trial, because I couldn't win. He made it very plain that Nevada made a point of granting divorces, not to denying them.

THE COURT: Well, that is not responsive.

That may be stricken out. (HEARING SUSPENDED UNTIL 2 P.M.)

P. M. SESSION

(Stenographer reads last question for Mr. Fusaro)

A. He said I would have to—

MR. PERMAN: That is subject to my exception.

THE COURT: You objected, I allowed it, and you excepted.

WITNESS: That I would have to remain and work as a waitress.

Q. Would you tell us when the next conference was following this one of the first week in September 1942? A. First week?

Q. As I understand, following this conference the first week of September, you took sick? A. Yes, and then I—

MR. PERMAN: Wait a minute. There is no question asked of the witness.

Q. Let me refresh your memory a little bit. Before adjournment you testified you were confined to your bed for a week or ten days and daily there were calls from Mr. Edwards, that right? A. Yes, that is correct.

Q. Finally your condition improved to such an extent that you did go up and see him again? A. Yes.

Q. What day was that? A. I believe it was the 16th of September.

Q. The date the divorce was granted was September 15th?

A. That's right.

Q. That was on a Saturday, was it? A. That's right.

Q. So that this was three days prior thereto?

A. Yes, that is correct.

Q. Was there any conference between September 16th and September 19th with Mr. Edwards? A. No.

Q. Now you stated that when you conferred with Mr. Edwards on September 16th, after talking with you his associate, Mr. Withers, was called, is that right? A. That's right.

Q. And then both Mr. Withers and Mr. Edwards talked with you?

A. That's right.

Q. And then, well, when you signed this paper was the document read to you?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No, it wasn't.

Q. And outside of what you have already stated with respect to its terms, that you were to get \$7500 in lump sum payment and \$35 each and every week for life, and if you married you were to receive \$35 a week for five years, was there any other explanation of what that document contained? A. None.

MR. PERMAN: Objection. Wait.

THE COURT: You mean given to her?

MR. FUSARO: Yes.

THE COURT: She may answer. MR. PERMAN: Exception.

Q. Any other explanation given to you? A. No.

Q. And when you signed that document on September 16th, 1942, who was present? A. I believe I was alone.

Q. Was that document signed after or before Mr. Withers was called?

A. After.

Q. When that document was signed were you given any money then and there?

MR. PERMAN: I object.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: No.

Q. Had you been given any money prior to the moment that you had signed that document? A. No.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Did you sign that document freely and voluntarily?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No.

Q. What caused you to sign it?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: They told me I had no choice but to sign it.

Q. Keep your voice up, please.

A. I had no choice, that I had to sign it.

MR. MASON: May we know who is meant by "they"?

Q. Whom do you mean by "they"? A. Mr. Edwards.

Q. Do you recall whether or not anything else took place on September 16th at Mr. Edwards' office on the occasion when that document was signed?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No.

Q. You don't recall? A. No.

Q. Please keep your voice up, Mrs. Coe. The next time you saw Mr. Edwards was on September 19th, that right? A. That's right.

Q. Did you know that there was to be a court hearing on September 19th, prior to September 19th?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I knew it on the 16th.

Q. That's the first time, is it? A. Yes.

Q. Well, what was said on the 16th about appearing in Court?

MR. PERMAN: Objection.

THE COURT: It does not appear to whom she was talking, and when.

MR. FUSARO: I will withdraw that.

Q. Was this information that you obtained about appearing in Court obtained on the 16th in Mr. Edwards' office? A. Yes.

Q. Who gave it to you? A. Mr. Edwards.

Q. What I would like to find out now is, as best you possibly can remember, what was said about appearing in Court on the 19th.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception

WITNESS: Well, he said he would call for me and we would drive to Carson City and go to Court there on the 19th.

Q. And did Mr. Edwards call for you? A. Yes, he did.

Q. Where were you when he called for you? A. 128 Liberty Street.

Q. That was your home or the place where you were living?

A. Yes, in Reno.

Q. Not your home? A. No, it wasn't my home.

Q. How did he call for you? A. He had a car.

Q. Was there anybody with Mr. Edwards? A. There was a young lady.

Q. Do you know who the young lady was? A. No, I don't.

Q. Was she introduced to you? A. Yes; I don't recall the name.

Q. And from 128 Liberty Street, Reno, Nevada, you drove to the Court House in Carson City, Nevada, that right? A. That's right.

Q. What time did you arrive at the Court House?

A. It was before noon sometime, I don't just remember the exact time.

Q. And you saw then Mr. Coe for the first time? A. That is correct.

Q. At the Court House in Carson City, Nevada? A. That's right.

Q. And did you hear Mr. Coe testify in Court? A. Yes, I did.

Q. And who asked Mr. Coe questions? A. Mr. Bible.

Q. His lawyer, that right? A. Yes, that's right.

Q. Did Mr. Edwards ask Mr. Coe any questions?

MR. PERMAN: Objection.

MR. FUSARO: Well, I will withdraw it.

Q. And after Mr. Coe testified, did anybody else testify?

A. I testified.

Q. Well, was there anybody in addition to Mr. Coe that testified before you? A. Yes, there was some woman testified.

Q. Had you known the woman? A. No.

Q. But then you were asked to take the stand, is that right?

A. That is correct.

Q. And you gave testimony that appears already in evidence, and I won't ask you about that. But did Mr. Bible ask you any questions?

MR. PERMAN: Objection.

MR. FUSARO: Well, I will withdraw it. The record is in.

Q. Well, after the hearing where did you go?

A. He drove me back to Reno, Mr. Edwards.

Q. That is, Mr. Edwards did? A. Yes.

Q. Now did you get any money on September 19th? A. Yes, I did.

Q. And where did you get it?

A. I got it in the corridor of the Court House.

Q. And when did you get the money in the corridor of the Court House? A. After the trial was over.

Q. And it appears in evidence that two checks totalling \$7500 were received by you? A. That is correct.

Q. Now how do you fix time when you received that money after the trial on September 19th, 1942?

A. Because I deposited the first chance I had, and that was the 21st, September 21st, which was the following Monday.

Q. Have you got your deposit book? A. I don't think I have it with me.

Q. But you have it? A. Yes, I have it.

Q. See if you have it, please.

A. I don't think I have it here, but I know I have it at the house. (Looks in handbag) No, I haven't it here.

Q. I wish you would bring it in Friday. A. I will.

Q. Now after the trial what took place between you and Mr. Edwards?

MR. PERMAN: Objection.

THE COURT: What is your offer on that?

MR. FUSARO: I offer to show a conversation between this witness and Mr. Edwards in which the witness asked Mr. Edwards what his fee would be and for the first time she was informed by Mr. Edwards that that had been all taken care of, that there was nothing due from her.

THE COURT: You may have it. MR. PERMAN: Exception.

Q. You tell us.

A. When Mr. Edwards gave me the check I asked him how much I owed him and he said, "You don't owe me a penny;" he said "that has all been taken care of."

Q. Now prior to that very moment did you have any information from Mr. Edwards that he was being paid by your husband's lawyer?

A. I did not.

MR. PERMAN: Objection.

THE COURT: Well, the question was answered, but it was leading in form. It might be objectionable from that.

Q. Prior to that time you tell us whether or not your counsel had given you any information with respect to his fees being paid by your husband.

MR. PERMAN: I object to that.

THE COURT: He may have it. MR. PERMAN: Exception

WITNESS: He never told me Mr. Coe was paying him.

Q. Now at any time did Mr. Edwards advise you with respect to a law in Nevada whereby you would be entitled to permanent support in the event that you were living apart for justifiable cause for a period of more than 90 days?

MR. PERMAN: Objection.

THE COURT: Of course I have no way of knowing whether or not that is a law in Nevada.

MR. FUSARO: Yes. I want at this time to call Your Honor's attention to a statute in Nevada. If we may have a moment?

THE COURT: Yes.

MR. FUSARO: Well, if Your Honor please, may I withdraw that question for the present and proceed?

THE COURT: Yes.

Q. Mrs. Coe, while we are waiting for the Nevada laws to come down, I would like to ask you some questions. When was the agreement with respect to the payment of the \$7500 and the \$35 per week delivered over to you so that you actually had it in your possession?

THE COURT: You mean to sign?

MR. FUSARO: No, Your Honor. Delivered to her as her property, as her own copy.

WITNESS: When he gave me the checks on September the 19th.

Q. When did you find out that Mr. Coe had remarried?

A. Well, Mr. Edwards called me September the 21st, which was Monday, following the Saturday of the divorce.

Q. And that's the day you found out, that right?

A. Yes, that is correct.

Q. And up to that day, September 21, 1942, had you seen Mrs. Coe #2, as we have described her, during the time that you were in Nevada?

A. No.

Q. Now after the divorce was granted did you return to Worcester?

A. Yes, I did.

Q. Did you return immediately or not?

A. No, I wasn't able to travel; I think I stayed there for a week or so.

Q. And you weren't able to travel by reason of what?

A. Well, I wasn't strong enough to travel.

Q. By reason of your condition, that right? A. That's right.

Q. By the way, Mrs. Coe, do you recall whether or not you were asked anything about your physical condition at the hearing of the divorce at the Court House in Carson City, Nevada? A. I was.

Q. You remember that you were asked something about it? A. Yes.

MR. FUSARO: I call Your Honor's attention to Section 9468 of the Compiles Laws of Nevada (hands volume to Court). It is on the top of that page, Your Honor (indicating).

THE COURT: I am puzzled by these references to California's civil code.

MR. FUSARO: I think Mr. McKeon may be able to help you out on that. He has checked the law with respect to this particular case, that is, the Nevada law.

MR. MCKEON: I am sorry, I cannot answer that accurately. I suspect that an historical search away back might show that Nevada was formerly a part of California.

THE COURT: You mean that is its derivation?

MR. MCKEON: That is only a guess. California cases are very often recited in Nevada reports, and as I recall my little bit of history, California was first settled by the Spanish—and California at that time was not limited to its present boundary line. But at the present instant I cannot give you an accurate answer. May I add further, at recess I will go up to the Library and ask them to make search, and they can look it up for me.

THE COURT: Well, obviously that is its derivation, because it runs all the way through the book. I don't think it needs anything else. It runs all the way through the book.

MR. FUSARO: Shall I proceed, Your Honor?

THE COURT: You may proceed.

Q. Mrs. Coe, did Mr. Edwards advise you with respect to this statute, "When the wife has any cause of action for divorce against her husband, or when she has been deserted by him and such desertion has continued for the space of 90 days, she may without applying for a divorce maintain in the District Court an action against her husband for permanent support and maintenance of herself"?

A. No, he did not.

MR. PERMAN: Are you through with the question?

MR. FUSARO: Certainly.

MR. PERMAN: Objection.

THE COURT: Well, I suppose, Mr. Fusaro, when a client comes into a lawyer's office he does not tell the client about every section of the law pertaining to the matter in hand. You may have it for what you think it is worth.

MR. FUSARO: Very well, Your Honor.

MR. PERMAN: Exception.

Q. Your answer is no? A. No, he did not.

MR. FUSARO: Your Honor, this is section 9468 of the Compiled Laws.

Q. Well, did Mr. Edwards give you any information—

THE COURT: Did you read the section just as it was?

MR. FUSARO: All, if Your Honor please, except the very end of it, "and of her child or children." As there are none in this case. But otherwise it is word for word. Shall I re-read it?

THE COURT: No, I don't think that is necessary; that would not apply.

Q. Did Mr. Edwards advise you that there was a law in Nevada whereby since you had cause for a divorce you could maintain an action there for separate support and maintenance forever?

A. No, he did not.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception

Q. Your answer is "He did not"? A. No, he did not.

THE COURT: "Forever," I suppose, meaning as long as she lived.

MR. FUSARO: Permanently, Your Honor.

Q. Or as long as you live, that right? A. Yes.

MR. MASON: This is all being offered on the grounds of fraud?

THE COURT: I don't think it would be admissible on any other grounds.

Q. Did you and Mr. Coe live as husband and wife in the state of Nevada during the period of time you were there in 1942?

A. We did not.

Q. And since this decree of divorce was rendered in Nevada, have you received any money on account of this Nevada agreement whereby your husband paid \$7500 and agreed to pay \$35 each and every week thereafter, but if you married that those payments of \$35 per week would continue for five years?

A. I have not received one penny since September 19th, 1942.

Q. Now did you receive any money from Mr. Coe on account of the decree rendered here in Massachusetts on March 25, 1942?

A. No, I haven't received any money since that decree.

Q. Do you understand my question?

Have you received any money under the Massachusetts decree?

A. Oh yes.

Q. That is what I refer to. Did you understand the previous question?

A. Would you please repeat it? (Stenographer reads aloud original question)

WITNESS: Yes.

Q. You were paid weekly the \$35 under the Massachusetts decree until September 19, 1942? A. That is correct.

Q. And after September 1942 did you receive some additional payments? A. No.

Q. Well, did you receive any money? A. After September 19th, 1942?

Q. Yes. I show you these exhibits.

A. Well, those were for back payments. They paid me up until September 1942.

Q. That is not my question, Mrs. Coe. Did you receive some money from Mr. Coe? A. Yes, two checks.

Q. I show you Exhibits 4 and 3 and ask you to identify those exhibits. What are they? A. Envelopes addressed to me from Mr. Coe.

Q. Did you receive them through the mail? A. That is correct.

Q. And these envelopes contained what? A. A check for \$35.00

Q. In each one, that right? A. That is correct.

Q. And when you received them, you received them on account of what?

A. On account of the \$35 decree, that was the Massachusetts decree.

Q. You applied them on account of the Massachusetts decree?

A. That's right.

Q. That was the decree entered March 25, 1942, that right?

A. That's right.

Q. And since that time you haven't received—

THE COURT: May I see those?

MR. FUSARO: Certainly (handing envelopes to Court).

MR. PERMAN: May I see them, if you please?

MR. FUSARO: Certainly. (Hands same envelopes to Mr. Perman)

Q. By the way, Mrs. Coe, when did you arrive back home in Worcester from Nevada, do you remember?

A. It was the first of October, first week, I would say, of October 1942.

Q. And you have resided here ever since 1927, that right?

A. That is correct.

Q. Now how long did you know Mr. Coe prior to the marriage?

A. Seven years.

Q. How long was the courtship? A. Seven years.

Q. And after your marriage and your return back here to take up residence in Worcester, did you travel extensively with Mr. Coe?

A. I did.

Q. Do you remember after your marriage where you travelled in 1934?

A. To California; we drove back the southern route and stayed in Florida, and drove back up to Worcester. And then in the summer months we would go up through New Hampshire, through Maine sometimes; down to the Cape.

Q. I see. And in 1935 did you travel? A. Yes.

Q. Where? A. Well, almost every year we would go to California.

Q. How long did you remain in California?

A. Sometimes three months; sometimes four months.

Q. And when you went in 1935 where did you stay?

A. We stayed at the Hollywood Franklin Hotel.

Q. And during that period of time, tell us what you did in California.

A. Well, we travelled; We would take short trips, probably to Death

Valley or down the Coast a ways. Mr. Coe just amused himself and took quite a bit of films along with him and took pictures, and played golf.

Q. And did you play too? A. Yes.

Q. Besides playing golf did you engage in any other sports there?

A. Horseback riding.

Q. Is he also a horseback rider? A. Yes.

Q. What other sports did you engage in? A. Dancing.

MR. MASON: I object to this line of inquiry as being immaterial.

THE COURT: He may have it. MR. MASON: Exception.

Q. You tell us, after you had spent all this time in California, where where you travelled to.

A. Then we would drive east probably in March, and arrive in Florida and stay there March and April; and sometimes we would go over to Nassau.

Q. Coming to Florida, when you arrived in Florida where did you stay?

A. Some years we stayed at the Pan-Coast, and I guess the Versailles; different hotels.

Q. Located where? A. Collins Avenue on the beach, Miami Beach.

Q. And you stayed there March and April, you say? A. Yes, about that; it would vary; it would depend upon how he felt.

Q. What did you do in Florida?

A. Swimming, fishing trips, anything that he felt like doing I would join in.

Q. Did you engage in any sports in Florida?

A. Well, nothing too strenuous. It is apt to get pretty warm down there.

Q. Then you say from Florida you travelled to Nassau? A. Yes.

Q. Any particular place?

A. We used to take an apartment, The Rozelda.

Q. And is that a very, very fashionable place? A. It is rather nice.

Q. And you stayed there how long?

A. Sometimes we stayed there for a month or six weeks; sometimes not that long, sometimes shorter.

Q. After that where did you go?

MR. MASON: May we have the date?

MR. FUSARO: This is '35, Your Honor.

MR. MASON: I object.

MR. FUSARO: I understand Your Honor had ruled on it.

THE COURT: Yes I did; and he may have the dates.

Q. 1935, that right? A. '35.

MR. MASON: I object to the question.

MR. FUSARO: This has already been ruled on.

THE COURT: I understood your objection was because you wanted the date, and I said you may have the date.

MR. MASON: I asked for the date. Now I object, now that I have got the date.

THE COURT: He may have it. MR. MASON: Exception.

WITNESS: Then we would start driving north, and we would stop at St. Augustine, Florida, for a week or so, and stop in the Carolinas, probably Pinehurst or Aiken, and would continue on slowly. Any place he would like to stop and take pictures he would. That was his hobby, taking motion pictures.

Q. And when you arrived back home where did you go for the summer?

A. Sometimes New Hampshire, sometimes Maine, sometimes the Cape. Of course after we got the yacht it varied quite a bit. We would probably go over to Martha's Vineyard, or any place else he liked.

Q. Did you stop at hotels or where? A. No, we usually slept aboard.

Q. I don't mean when you were on the yacht. When you went to New Hampshire where did you stop? A. Oh, we stopped at hotels.

Q. Where did you stop at in New Hampshire?

A. The Randall, North Conway.

Q. Well, in 1935 how much of the time would you say was spent in travel? A. About three-quarters of the year.

Q. That would be about nine months? A. About nine months.

Q. And in 1936 did you travel? A. It was about the same every year.

Q. About the same every year? A. Yes.

Q. Right up until when? A. Until 1939, which was the last trip to California I made with Mr. Coe.

Q. And the trips stopped after 1939, that right? A. That's right.

Q. That's about the time that Dawn Allen arrived on the scene, that right? A. That's right.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: The question is leading and may be excluded for that

Q. When, Mrs. Coe, did you discover that Dawn Allen was interfering with your domestic affairs?

MR. PERMAN: Objection.

MR. MASON: May I ask if we are retrying the separate case, or are we confining ourselves to the motion for modification?

THE COURT: I take it that the issue is on the modification of the decree.

MR. MASON: Your Honor apparently feels this has bearing on that issue?

THE COURT: What has been introduced so far I feel has a bearing upon the issue.

MR. MASON: The issue of modification of the decree?

THE COURT: Yes.

MR. MASON: My exception to that ruling.

Q. What is your answer? A. Please repeat the question.

THE COURT: Are you objecting to this particular question?

MR. MASON: I object to this particular question for the same reason I objected to the other question.

(Stenographer reads question for Court)

THE COURT: That particular question is excluded on exception. Not for the ground that you stated.

Mrs. Coe, when did you discover any relationship between Mr. Coe and Dawn Allen? A. The fall of '39.

MR. MASON: I object.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. And after the fall of 1939 these trips discontinued, that right?

A. That is correct.

Q. Now did you find Miss Allen and your husband at 6 Boynton Street in October of 1941?

MR. PERMAN: Objection.

WITNESS: I did.

MR. PERMAN: Wait a moment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I did.

Q. Tell us what occurred.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: I saw him in my bedroom from the street, and he was reaching to pull the curtain down. So I went up to the door and I was accompanied by a taxi driver.

MR. MASON: Can't you keep your voice up? You have been able to do that before.

WITNESS: Did you hear any of it?

Q. Answer the question. Continue right on.

A. I was accompanied by a taxi driver and at first I wasn't able to get in. Finally Mr. Coe said, "You might as well come in and see for yourself." So when I went in I saw Miss Allen, she was downstairs then, sitting with a glass in her hand, drinking; and Mr. Coe was there, and he had his coat off.

Q. What did you say to Miss Allen?

MR. PERMAN: Objection.

MR. MASON: Objection.

Q. In the presence of your husband.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I asked her if she knew what she reminded me of.

THE COURT: Now we are on something else since your last objection. This is admissible, I take it, on the ground of showing the relationship between Mr. Coe and Mrs. Coe #2, and when it began and what its nature was, as having a bearing upon what his purpose was when he went to Nevada and also because it may or may not contradict what Mrs. Coe #2 testified to on the stand.

MR. PERMAN: The respondent excepts to its admission on those grounds.

Q. You may continue. A. I think I told her she reminded me of a vulture; and she said she was glad I was there, because she intended to take Van and she was glad I knew what the situation was.

Q. Who is "Van"? A. Van Coe, Martin Van Buren Coe.

Q. What did your husband say after that statement in the presence of Miss Allen?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He was glad I knew what the situation was, he said "I am glad you found out."

Q. That is what Mr. Coe said? A. Yes.

Q. How long was it would you say that you waited before you were admitted? A. Well, about twenty or twenty-five minutes.

Q. Now I direct your attention to an incident that occurred in December 1939 at the home of Miss Dawn Allen. Do you recall that?

A. Yes, I do.

Q. And you went to that home with whom?

A. With my sister, Mrs. Frances Bird.

THE COURT: What was the date?

MR. FUSARO: December 1939.

Q. Do you remember the exact date?

A. No, I don't. Was it September or December?

Q. December.

A. No; it was about the middle of the month. I should say.

Q. About the middle of December 1939? A. Yes.

Q. When you arrived at the home of Dawn Allen, whom did you see?

A. I saw my husband there with Miss Allen, sitting on the sofa, some sort of a sofa, very close together.

Q. What time was it when you arrived?

A. About half past ten in the morning.

Q. And had your husband been home at all the previous night?

A. No, he hadn't.

Q. He had been away then how long? A. For almost a day.

Q. So what took place when you arrived at the home of Dawn Allen, now, Mrs. Coe #2?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I asked him for an explanation, and she said, I believe, that she was in love with Van; and then there was a lot of confusion. Her mother came in from the kitchen and threatened to throw us out.

Q. Do you recall that Dawn Allen said to you on that occasion, "I love Van; I intend to take him away from you. I am glad you came over."

A. That's right, yes.

MR. PERMAN: Wait. I object to that.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: That's right.

Q. Those are the exact words, are they? A. The exact words, yes.

Q. What did Mr. Coe say when Dawn Allen—

THE COURT: I allow that because he had asked her what was said and she did not seem to remember it, and it is refreshing her recollection.

WITNESS: He didn't have very much to say.

Q. Did he say anything when Dawn Allen made that statement?

MR. PERMAN: Objection.

WITNESS: I don't remember him saying anything.

Q. You don't recall him saying anything? A. No.

Q. After 1939 was there a change in Mr. Coe's affections towards you?

A. A radical change.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. And was there a change in Mr. Coe's behavior towards you?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Yes.

Q. In 1939? A. Yes, that is right.

Q. Now what do you say was the change that you observed in Mr. Coe after your discovery of his relations with Dawn Allen?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: He became very indifferent. He was very rude, and he was mean to me.

Q. Were you permitted to go on any of these extended trips following that discovery? A. No.

Q. Did Mr. Coe reduce his allowance following 1939?

A. That is correct.

MR. PERMAN: I object.

THE COURT: That is leading in form.

MR. FUSARO: Very well.

Q. Let me ask you prior to Dawn Allen's having any relations with your husband, did you have accounts in the various stores within and without the Commonwealth of Massachusetts? A. I did.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Where? A. I had them in Worcester, in Boston and New York.

Q. What accounts did you have in New York?

A. Lord & Taylor's and Best & Co.

Q. Any others? A. That was about all in New York.

Q. What accounts did you have in Boston?

A. Filene's, Slattery's, Jays, White's Stewart's, and Jordan Marsh.

Q. What accounts did you have in Worcester? A. Richard Healy's, Filene's, Boston Store; MacInnes, Barnard-Sumner & Putnam, Hastings. Practically all the stores in town.

Q. Did you have your own bank account? A. Yes, I did.

Q. And who furnished the money for that bank account?

A. Well, it was some money my father left me.

Q. That is, for these accounts? A. Oh no, not for the accounts. No, he settled all the bills.

Q. But you had your own little bank account? A. Oh yes.

Q. That is separate and apart from these accounts that you had in the stores, that right? A. That's correct, yes.

Q. Now tell us what clothes he furnished up to the time that Dawn Allen arrived in your domestic affairs.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Tell us.

A. Well, he was very generous in regard to clothes. In fact, he insisted I buy more sometimes than I would really find any use for. He used to buy the New York Times and would clip out different ads and probably order six different gowns. And the same way in shoes. I paid probably on an average of \$30 or \$40 a week on clothes.

Q. Every week? A. Yes.

Q. That would be \$1500 or \$2000 a year for clothes alone?

A. That's right.

Q. And how about jewelry? A. Oh yes, he gave me pieces of jewelry.

Q. Well, have you some judgment as to how much was expended yearly on jewelry?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

MR. MASON: May we have it appear this is all prior to March 1942, for the record?

THE COURT: I think it does appear.

MR. MASON: Well, the questions are very general.

Q. All right, you may answer.

THE COURT: I don't see how it could very well be subsequent to then and be consistent with other parts of the evidence.

MR. MASON: It would be unlikely, but possible.

THE COURT: Well, Mr. Fusaro started out asking what were the circumstances prior to any relationship between Mr. Coe and Mrs. Coe #2.

MR. MASON: Then it is understood this is all prior to March 25, 1942?

THE COURT: I think so.

Q. What is your answer? A. About \$2000 a year.

Q. \$2000 per year? A. 'm, 'm.

Q. And did Mr. Coe furnish you with motor vehicles?

A. Yes, he bought me a car.

Q. He bought you a car? A. Two cars, in fact.

Q. You mean you had two cars at the same time? A. That's right.

Q. Up to 1939? A. That's right.

Q. What makes were they?

A. I had a Ford convertible and a Mercury Sedan.

Q. And those cars were registered in your name or Mr. Coe's name?

A. In my name.

Q. Both in your name? A. Yes.

Q. And following this episode when Dawn Allen arrives, did Mr. Coe take either of those cars away from you? A. He took one away from me.

Q. Which one? A. The Mercury.

THE COURT: What was the other one?

WITNESS: A Ford.

THE COURT: A Ford Convertible?

WITNESS: Sedan.

Q. When did your husband acquire the yacht?

A. It was in 1938, '37 or '38.

Q. Do you know what he paid for it?

A. It was custom built; it was in the vicinity of \$35,000.

Q. Custom built? A. Yes.

Q. And in connection with these yachting trips were there lavish expenditures of money?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I think the question is too general and leading.

Q. Have you been on trips in that yacht? A. Yes.

Q. Do you know how many gallons of gasolin it took to operate it on a trip, say, of 75 or 100 miles?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer. MR. PERMAN: Exception.

THE COURT: If she knows.

Q. Do you know? A. It had a cruising radius of about 400 miles, and I think it had a capacity of about 200 gallons of gasoline. And he would fill it up at about 20c a gallon. You could figure that up.

Q. Two hundred gallons?

A. Yes, 20c a gallon. Of course the Captain took care of the details.

THE COURT: Do you know the size of it?

WITNESS: Yes. It was forty-seven feet.

THE COURT: Long?

WITNESS: Yes, 46 feet long. It had two Chrysler motors.

THE COURT: Chrysler automobile motors or marine motors?

WITNESS: Marine motors.

Q. Tell us something about the appearance of it. A. Well, it slept six.

Q. What do you mean by that expression?

THE COURT: That means that six people could sleep on it.

WITNESS: And in addition to that, there was accommodation for two paid hands. It was very stream lined; it was built from the design of—Michigan designer.

Q. Mrs. Coe, do you recall other expenditures by Mr. Coe up to 1939, when Dawn Allen arrives?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, I don't quite understand the question.

Q. Up to the time that Dawn Allen had some relations with Mr. Coe, do you recall some other expenditures made by Mr. Coe on you?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Let me refresh your recollection. You testified that he asked you to purchase clothes and there was spent an average of fifteen hundred or two thousand dollars a year; and about \$2000 a year for jewelry, is that right? A. That's right.

Q. And were there other expenditures in addition to the trips?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: Well, I could have almost anything I wanted. He was very generous.

Q. Well, that doesn't help us. Did you play golf? A. I played golf.

Q. Here in Worcester? A. Yes.

Q. Did you belong to some organization?

A. We belonged to the Worcester Country Club.

Q. All right. Now did he have horses? A. Yes, five horses.

Q. And in addition to golfing and horseback riding, were there other activities that you engaged in? A. Well, yachting.

Q. Well, you have told us about the yachting. Any other sports?

A. Dancing.

Q. And you say he had five horses? A. Five horses, yes.

Q. Did you have any?

A. No, they were all his. But I could ride them any time I wanted to.

Q. Any one of those five? A. No, they were his.

Q. But they were at your disposal, that right? A. Yes, that's right.

Q. Well, have you figured up what it cost a year for these expensive travels from the time you were married up to the time they stopped in '39?

MR. PERMAN: Objection.

WITNESS: I couldn't say offhand.

THE COURT: Just a minute.

MR. PERMAN: Well, in view of her answer I will withdraw the objection.

Q. I would like to have you think it over and give us your best judgment.

MR. PERMAN: Objection.

MR. FUSARO: Well, you withdrew it, didn't you?

MR. MASON: He said in view of her answer.

Q. Do you know? A. Well, I couldn't say offhand.

Q. What do you mean by that? Do you need some time to think it over? A. I would have to have a little time, yes.

Q. All right. I would like to have you think it over.

A. I think probably about \$10,000 a year.

MR. PERMAN: I object. There is no question before the witness now.

Q. What is your judgment about it? A. About \$10,000 a year.

MR. PERMAN: Wait a minute. Objection, Your Honor.

THE COURT: I will exclude it in that form. You may have the information, I mean you may have the evidence, but not exactly in the form in which you asked it.

Q. Well, can you tell us when you went to California and stayed generally three or four months, that right,— A. That's right.

Q. What the expense of that trip amounted to?

MR. PERMAN: Objection.

THE COURT: If she knows.

MR. FUSARO: Yes.

WITNESS: Probably about \$50 a day.

Q. All right. Then when you stopped off at Florida, what was the cost per day?

MR. PERMAN: Objection.

THE COURT: If she knows. MR. PERMAN: Exception.

WITNESS: About \$75 a day.

Q. And in Nassau?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: About \$50 to \$75 a day. We went in bathing.

Q. Mrs. Coe, did Mr. Coe provide you with spending money?

A. Yes, he did.

Q. What was the average amount?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: About \$35. a week.

Q. That was for what purpose? Detail it, in other words.

A. The theaters and charitable donations. Anywhere I couldn't charge it I would have the money to pay for it.

Q. In addition to all the other item you have told us about?

A. That is correct.

Q. You live now in what kind of a place? A. I live in a garret.

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: I think she may state her present living conditions.

MR. PERMAN: Exception.

THE COURT: If it is shown that her financial condition is such that these living conditions would be commensurate with her financial condition.

MR. FUSARO: Surely. I intend to do that.

Q. You have described it as a garret; and is that where you are now living? A. That's right.

Q. Since June 11, 1944, was it—is that the right date?

A. That's right.

Q. Well, there are how many rooms in this garret? A. Three rooms.

Q. And you and your sister, Mrs. Moffitt, share it, is that right?

A. That's right.

Q. And is that a heated garret?

A. Sometimes it is, and sometimes it isn't.

Q. I mean, is there central heating system, or do you have to heat it by putting coal in a stove, or oil in it?

A. No, they control the furnace down on the first floor.

Q. And since the receipt of the \$7500 that you received in Nevada have you any of that money now? A. Not a penny.

Q. What has been your physical condition, Mrs. Coe, since Dawn Allen appeared on the scene?

MR. PERMAN: Well—

THE COURT: Well, do you mean by that question to show that the appearance of Dawn Allen was the cause of her physical condition?

MR. FUSARO: No, if Your Honor please.

THE COURT: Or are you merely giving that as a time?

MR. FUSARO: That's right, to fix the time; since Dawn Allen has broken up her home that her physical condition has become affected to such an extent that she—

THE COURT: Because of that?

MR. FUSARO: Because of that, because of this Nevada marriage and so forth, the whole chain of circumstances.

THE COURT: Well—

MR. FUSARO: Of course Mr. Coe is in the picture too, Your Honor.

THE COURT: Yes. I don't suppose that is now material. That is, that was once adjudicated. She was granted a decree that she was living apart for justifiable cause and there was a decree on it. You can show what her physical condition is now, and whether or not she has been able to work from what date? Whatever it was. But the cause of it is not now material.

MR. FUSARO: I think you are right about it.

Q. What is your physical condition, Mrs. Coe?

A. Well, it isn't very good; I'm not very strong, and I have developed a heart ailment as a result of the strain.

Q. And have you been able to perform any work since September 19th, 1942? A. No, I haven't.

Q. And have you done any work since September 19th, 1942, right up to the present time? A. No.

Q. Have you done anything whereby you have received any money as wages or income since September of 1942? A. No.

Q. And have you been under the care of any doctor since that time?

A. Yes, I have.

Q. Under whose care? A. Dr. Brigham.

Q. He is a Worcester doctor? A. Yes.

Q. And are there times when you are confined to your home as a result of your condition? A. Yes, there is.

Q. Have you any bank account anywhere? A. I have one, yes.

Q. How much? A. I think it is \$600.

Q. And is that your entire wealth at the present time?

A. No, I am in debt.

Q. What I wanted to find out was whether you had any other property of any other kind, nature or description outside of this account of \$600.

A. Just my car.

Q. Well, the automobile? A. Yes.

Q. Is that the automobile you have previously described?

A. Yes, the Ford.

Q. Ford Convertible Sedan? A. Yes.

Q. That is what year, by the way? A. 1939.

Q. And is it the same car you have previously described? A. Yes.

Q. What debts have you, Mrs. Coe?

A. I owe about—you want to know the amount?

Q. Yes, the bills you owe.

A. I owe some doctor's bills and I owe for insurance on my car, and I owe some for storage on some furniture; and then in addition I borrowed \$2000 that I owe. I may have more; I couldn't say offhand without looking, I mean checking.

Q. You have borrowed \$2000? A. Yes.

Q. From whom? A. My sister.

Q. Is that Mrs. Moffitt? A. Mrs. Moffitt.

Q. Have you been able to keep up your station in life as you have described it between the years 1934 and 1939 since September 19th of 1942 to date? A. No.

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No.

Q. By the way, this coat you have on now, who furnished that?

A. Mr. Coe in 1935.

Q. 1935. Since September 1942 have you engaged in golf? A. No.

Q. Or have you been out yachting or dancing? A. No.

Q. Or horseback riding?

MR. MASON: Just a moment. You have two questions there.

THE COURT: The last time there was yachting, and she said no.

MR. MASON: He also inquired about dancing.

THE COURT: Did you answer as to whether you had been dancing?

WITNESS: No, I don't think so.

Q. Well, have you been able to keep up the style of living that you were accustomed to during the time that you and Mr. Coe lived happily, since September 1942 to date?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: No, I haven't.

MR. FUSARO: May I have a moment, if Your Honor please?

(Mr. Fusaro confers with Mr. McKeon)

Q. Prior to Mr. Coe's filing his libel for divorce in this case had he ever made any statement that he would get a divorce from you?

MR. PERMAN: I pray Your Honor's Judgment.

THE COURT: Unless you show that someone was present I suppose it would be inadmissible, because during that time they were still man and wife, without any question. While you are waiting, I might ask her a few questions.

Q. BY THE COURT: What was the condition of your health at the time of your separation from Mr. Coe and at the time of the first trial?

A. I had lost about twenty pounds and I was highly nervous, and I wasn't eating or sleeping.

Q. When do you say that you became unable to work?

A. Since the separation, since 1942. I lost twenty pounds.

Q. Would you say that your condition of health was such prior to that time that you could work at that time? A. Prior to 1942?

Q. Yes. A. I would say prior to 1939 I was in very good health.

(HEARING SUSPENDED UNTIL 10 A.M. FEB. 23. 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

March 8, 1945.

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the afore-mentioned matter.

LAURA G. QUINN,
Commissioned Stenographer.

FEBRUARY 23, 1945 HEARING

MRS. KATHARINE C. COE, resuming stand, continued to testify as follows:

Q. BY MR. FUSARO (Cont'd): Mrs. Coe, at adjournment last Wednesday we were inquiring into your health. I think at the last hearing in March 1942 you said you had some nervous condition and had lost some weight and had some stomach disorder, is that right? A. That is correct.

Q. Now when did your heart condition come out?

A. The fall of 1942.

Q. Since the fall of 1942 what has been that condition?

A. Well, I have very sharp pains in my heart and they go up through my shoulder.

MR. PERMAN: I didn't hear that.

WITNESS: Very sharp pains in my heart that go up through my shoulder. I have dizzy spells, shortness of breath and palpitation.

Q. And has that become progressively worse since? A. It has.

Q. And you have had some disturbances in the fall of 1944, did you?

A. Yes.

Q. What were those disturbances? A. I had fainting spells.

Q. And was it about that time you called in Dr. Brigham?

A. It was.

Q. Well now, when did you first learn that you did have a heart condition?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: In September of 1944.

Q. And since that time what has been your ability to do any work?

MR. PERMAN: Objection.

THE COURT: She may answer. MR. PERMAN: Exception.

WITNESS: I have not been able to do much of anything. Some weeks I spend two or three days in bed with these attacks. I haven't been able to do any of the housework. My sister does that.

Q. That has been the situation since September 1944 to the present time, is that right? A. That's right.

Q. Now in 1943 did you go to Florida? A. Yes, I did.

Q. What months?

A. The latter part of January I went down and was down there for February and March and part of April.

Q. Then did you return back to Worcester following that trip to Florida? A. I did.

Q. Where was it in Florida you stayed?

A. I stayed at Lenox Avenue, on Lenox Avenue, Miami Beach.

Q. And you went to Florida during those months for what purpose?

A. For my health, to see if I could improve it.

Q. And in the summer of 1943 did you leave Worcester? A. I did.

Q. Where did you go? A. To Hyannis, Massachusetts.

Q. That is a summer resort? A. Yes.

Q. And you were at that summer resort how long?

A. About three or four weeks, I'm not sure.

Q. And in 1944 did you return to Florida? A. I did.

Q. Tell us where you went in Florida in 1944?

A. I went back to Miami Beach, during the month of March I went down and stayed about a month.

Q. You stayed at that time about one month? A. Yes.

Q. And in the summer of 1944 did you go to any resort, summer resort? A. I went down to the Cape.

Q. Same place? A. Yes.

Q. How long did you stay there?

A. About two or three weeks; I'm not sure about that.

Q. And these trips to Florida in 1944 and the trip to the Cape in '44 were for what purpose? A. My health.

MR. FUSARO: You may inquire.

MR. PERMAN: At this time, if Your Honor please the respondent moves that all the testimony of this witness as to conversations had with and conduct of her attorney, retained by her in Nevada, and admitted for the purpose of showing fraud, be stricken from the record.

THE COURT: Motion is denied.

MR. PERMAN: Exception.

Q. BY MR. PERMAN: Now Mrs. Coe, you are the Mrs. Coe that has been referred to in these proceedings as Mrs. Coe #1? A. That's right.

Q. You recall testifying day before yesterday that you last lived on Boynton Street in January of 1941? A. Yes.

Q. Is that true? A. Yes.

Q. Isn't it true, Mrs. Coe #1, that you did not leave Boynton Street until after the decree made for your temporary support by Judge Atwood?

A. Yes, I left after he told me to leave.

Q. And don't you now recall that the decree for temporary support was made by Judge Atwood on March 8th, 1941? A. That may be correct.

Q. If that decree of Judge Atwood was made on March 8th of 1941, it is true then, isn't it, that you did not leave Boynton Street until some time after that date? That right?

A. Yes, that's right. I left after he told me to leave.

Q. Before the decree made on the 8th day of March 1941 by Judge Atwood, you recall testifying before him don't you? A. Yes, I did.

Q. And you recall in the course of that hearing before Judge Atwood you testified fully as to your charge accounts?

A. I testified before Judge Atwood.

Q. You testified as to your purchase of clothes? A. Yes, I did.

Q. You testified as to your travels? A. I'm not certain about that.

Q. Well, you made a full and complete disclosure to Judge Atwood, did you not, as to the things that you were used to and had been used to up to that time?

A. I remember talking about clothes, and I'm not sure about travel, Mr. Perman.

Q. You are not sure about travel? A. No.

Q. Do you recall testifying about the interests you had in common with Mr. Coe at that time? A. It is possible, yes.

Q. And do you recall testifying at that time that you were ill and required the services of four physicians? A. Yes, I was ill.

Q. You were ill. Substantially everything that you testified to here with reference to what you had become accustomed to during your life with Mr. Coe you testified to before Judge Atwood?

A. Well, I don't remember all my testimony before Judge Atwood.

Q. Well, can't you tell us whether or not you did substantially testify in the hearing before Judge Atwood as to all those things you testified to in this proceeding concerning what you had become accustomed to during the period of time you were living with Mr. Coe?

A. Well, I don't remember.

Q. You don't remember? A. No.

Q. Will you look at this (handing paper to witness). Read it to yourself. Does that help you to refresh your memory?

A. What part in particular? Any particular part you refer to?

Q. Does it help you to refresh your memory as to whether or not you testified before Judge Atwood as to the matters concerning what you had become accustomed to during the period of time you were living with Mr. Coe? A. Yes, I remember.

Q. You remember that? A. Yes.

Q. And your testimony then was substantially the same as it was during this hearing? A. I think so.

Q. All right. You left Boynton Street, Mrs. Coe #1, as a result of an order made by Judge Atwood in his decree for temporary support?

A. That's right.

Q. And you will recall at that hearing before Judge Atwood Mr. Coe testified, did he not? A. I don't remember.

Q. You don't remember whether Mr. Coe testified or not?

A. I don't remember, no.

Q. Well, I will ask you to look at that again.

A. Any particular part here?

Q. Yes, with reference to Mr. Coe I ask you whether or not that refreshes your memory as to whether Mr. Coe testified at the hearing before Judge Atwood in March of 1941. A. It says so here.

Q. I'm not asking you whether or not it is there; I am asking you whether or not that refreshes your memory. A. Well, I don't remember.

Q. You don't remember; all right... Do you recall the allegations that you made in your petition for temporary support? A. No, I don't.

Q. Do you recall whether or not you alleged in your petition for temporary support that "Your petitioner," referring to yourself, "is without means of support"? A. I don't remember.

Q. You don't remember? A. No.

Q. Was that allegation true?

MR. FUSARO: Just a moment, if Your Honor please. I object.

THE COURT: Hasn't that been decided whether or not it was true? You may ask her.

MR. PERMAN: Solely for the purpose of cross examination, if Your Honor please.

THE COURT: Well, of course you may ask her if any statement she made was true. But the allegations in the pleadings I suppose are adjudged by the findings of the Court. Now as to any statement she made in testimony you may have it, whether or not it is true, if it contradicts her present testimony. Any and everything that she made in testimony. I think that has a distinction from the pleadings.

MR. PERMAN: I will do that; I will follow Your Honor's suggestion.

Q. Did you testify before Judge Atwood that you were then without means of support? A. I don't remember, Mr. Perman.

Q. You don't remember? A. No.

Q. Do you remember testifying before Judge Atwood that you desired to have substituted for what you then had a weekly cash allowance?

A. I don't understand that.

Q. Well, I will ask you some preliminary questions. You were then living at Boynton Street, weren't you? A. Yes.

Q. You then had charge accounts, didn't you? A. Yes.

Q. Those were not interfered with at the time of that hearing on the temporary support? A. No.

Q. You testified as to that before Judge Atwood, didn't you?

A. I believe I did.

Q. Didn't you in the course of that hearing tell Judge Atwood that you wanted a weekly cash allowance instead of living under the arrangements that you were then living under?

A. Well, I don't remember the exact wording of it.

Q. Well, was it that in substance? A. It could be.

Q. Now you recall the hearing in March of 1942, don't you? A. Yes.

Q. That is a little fresher in your mind, is it?

A. Well, I remember that.

Q. You remember that? A. Yes.

Q. Distinctly? A. Well, any particular part of it?

Q. Well, do you remember the hearing; that was a hearing that lasted for some seven or eight days, was it not? A. It ended March 25th.

Q. You were present throughout the hearing, weren't you?

A. Yes, I was.

Q. Now, at that time you gave full testimony as to your mode of living, before Judge Wahlstrom? A. I'm not sure.

Q. You are not sure as to that? A. No.

Q. Do you recall whether or not you testified as to the amount of clothing that had been purchased for you by Mr. Coe? A. I probably did.

Q. Do you remember testifying concerning the travels you made?

A. I may have, yes.

Q. And the expenses incurred in connection with those travels?

A. I may have.

Q. And as you now recall it, didn't you testify substantially the same before Judge Wahlstrom as you have in this hearing, concerning those matters that you had become accustomed to in your living with Mr. Coe?

A. Well, I don't remember exactly what was said before Judge Wahlstrom.

Q. Well, I am asking you whether or not your testimony then wasn't substantially the same as it was at this hearing, concerning those things you had become accustomed to during the time that you were living with Mr. Coe as husband and wife?

A. I believe it must have been the same.

Q. Now at that time you testified that you were in poor health and unable to work? A. Yes.

Q. And as a matter of fact you recall now, don't you, that Dr. Simmons testified in your behalf? A. He did.

Q. And you recall the testimony that you were then because of your physical condition unable to engage in any gainful employment?

A. I believe he said that, yes.

Q. Was that the truth?

MR. McKEON: Wait a moment.

MR. PERMAN: I will withdraw that question.

THE COURT: All right.

Q. And is it true, Mrs. Coe #1, that in March of 1942 your physical condition was such that you were unable to engage in any gainful employment? A. Yes, it was.

Q. In the course of the hearing before Judge Wahlstrom in March of 1942, did you testify with reference to your interests in common with Mr. Coe? A. It is possible.

Q. Wasn't your testimony substantially the same then as was given in the course of this hearing? A. I believe so.

Q. Were you employed at the time of your marriage to Mr. Coe?

MR. FUSARO: I object.

THE COURT: Well, he may have it for this purpose: To show whether or not at that time she was able to earn a living.

MR. FUSARO: Very well, Your Honor.

THE COURT: He may contend that she is now able to; and if he contends that her condition is the same, what she was able to earn then might have a bearing on what she was able to earn now. If that is his contention.

Q. The Judge says you may answer the question. **A.** Yes.

Q. And what was the nature of your employment at the time of your marriage to Mr. Coe? **A.** I was a saleswoman.

Q. Where were you employed? **A.** Denholm & McKay's.

THE COURT: How do you spell that? (Witness spells same for Court)

MR. FUSARO: Commonly known, Your Honor, as the Boston Store. It is on Main Street, practically opposite the City Hall.

Q. That is a department store? **A.** Yes.

Q. Located on Main Street? **A.** Yes.

Q. In the city of Worcester? **A.** Yes.

Q. That right? **A.** Correct.

THE COURT: And that was when, that you were last employed?

WITNESS: 1935.

Q. Do you recall following the conclusion of the evidence on March 25, 1942, that Judge Wahlstrom made an oral finding of fact?

A. Well, I don't remember.

Q. You don't remember? **A.** No.

Q. Well, let me see if I can refresh your memory. Do you recall, Mrs. Coe #1, the following finding that was made by Judge Wahlstrom: "She married—

MR. MCKEON: What are you quoting from, please?

MR. PERMAN: Page 16 (referring to printed record)

Q. "She married for security, which isn't everything in life. A girl who marries for security or because her husband has a little money sells herself too cheaply. A little money doesn't guarantee marital happiness. From the beginning of their marital life she was a social outcast. From their earliest days they went separate ways. Neither wife nor husband found real companionship in each other. They had very little in common. Coe and his wife were not compatible. They went their separate ways from the first days of their marriage. Why under the sun did they ever get married then? Well, I believe it was due to the fact that Mrs. Coe, who was a saleswoman, thought of security." Do you recall that now?

MR. FUSARO: Just a moment. Where did you say you read from?

MR. PERMAN: Page 16.

MR. MCKEON: First record.

MR. PERMAN: First record.

Q. Do you recall that finding?

A. My answer is that I married Van because I loved him. That is my answer.

Q. Wait a minute.

MR. PERMAN: May that go out, Your Honor?

THE COURT: That may go out. The question was whether or not you recall that. If you recall it you may answer "Yes." If you do not recall it, you may answer "No."

WITNESS: I recall it.

Q. Now having in mind that finding, do you still say, as you testified here, that you and Mr. Coe found real companionship in each other up to 1939? A. We did, Mr. Perman.

Q. Do you recall the finding that was made by Judge Wahlstrom in his report of material facts, which were photostated and taken to Nevada with you, in which this finding was made—and I quote Page 15 of the same record: "They occupied separate rooms from the time they were married." Do you recall that finding? A. Yes, I recall it.

Q. And in view of that finding do you now say that up to 1939 you and Mr. Coe found real companionship in each other? A. Yes, I do.

Q. Do you recall the finding: "They did not entertain any of the husband's friends, nor did they go out with or visit with any of his friends." A. Well, that is not true.

Q. I am not asking you whether that is true or not. That was a finding that you know was made by Judge Wahlstrom—you know that, don't you?

A. If you say so, yes.

THE COURT: No. The question is do you recall it or do you know it.

WITNESS: No, I don't recall that particular part.

Q. Didn't you take the report of material facts, a photostat of that with you to the state of Nevada?

A. But I wasn't in very good physical condition and I probably don't remember that. I probably did take that, if it was in that envelope, with me; there were quite a few in that. But if I took that particular one I don't recall.

Q. You cannot recall it? A. No, I can't recall it today.

Q. Now what do you say about your physical condition at the time the report of material facts was made known? A. What month and year?

Q. 1942, sometime within a month. A. I wasn't well.

Q. You were not well? A. No.

Q. Didn't you ever discuss the report of material facts with your counsel? A. No, I don't recall that.

Q. Well, if Judge Wahlstrom made that finding, do you now say that you and Mr. Coe found real companionship in each other up to 1939?

A. I certainly do, Mr. Perman; real happiness.

Q. Was the finding of Judge Wahlstrom, "I further find that the wife's friends never visited at their home, nor did the parties go out with or visit her friends"? A. Three-quarters of the year—

MR. MCKEON: Wait a moment.

THE COURT: Don't answer yet.

WITNESS: I'm sorry.

Q. Was that finding ever called to your attention, Mrs. Coe #1?

A. Not that particular.

Q. Assuming that was a finding that was made by Judge Wahlstrom following the hearing of March in, 1942, do you now say that you and Mr. Coe found real companionship in each other?

A. I do; very definitely.

Q. Was the finding of Judge Wahlstrom, and I quote: "The facts warrant me in finding that the husband had nothing in common with the wife's friends nor the wife with the husband's friends" ever called to your attention? A. No.

Q. You never knew about that finding?

A. It was never called to my attention.

Q. It was never called to your attention? A. No.

Q. If that was a finding of fact that was made by Judge Wahlstrom following the hearing of March 1942, do you now say that you and Mr. Coe found real companionship in each other up to 1939? A. I do.

Q. Was the finding, "I find that the only people who did visit the home were members of the wife's family, namely, her mother and two sisters, and that if the husband was at home when they called he would disappear, as he had nothing in common with the wife's people," ever called to your attention? A. No, it was not called to my attention.

Q. If that was a finding of fact that was made by Judge Wahlstrom in view of that finding do you now say that you and Mr. Coe found real companionship in each other up to 1939? A. I do.

Q. Those findings of fact that I have referred to as being made by Judge Wahlstrom, do you say that those findings of fact were not true?

MR. McKEON: I object.

THE COURT: Excluded.

Q. Do you recall the finding made by Judge Wahlstrom, and I quote, "I find that the husband alone visited with his friends regularly and entertained them and played with them in another house owned by him at 2 Boynton Street, Worcester. The wife was never present on these occasions. She lived her life as she desired, and he did likewise."

A. They were poker parties. 1—

MR. McKEON: Wait a moment.

Q. Was that finding of fact made by Judge Wahlstrom ever called to your attention? A. It was never called to my attention, no.

Q. If that was a finding of fact that was made by Judge Wahlstrom, do you now say that you and Mr. Coe had full and complete interests in common up until 1939? A. I do, Mr. Perman.

Q. Was the finding of Judge Wahlstrom, and I quote, "The parties did take some trips together, but I find that on some of these occasions the wife insisted that her sister accompany them. On at least one occasion while in Florida the wife became homesick and insisted on returning to her family in Worcester." Was that finding of fact made by Judge Wahlstrom ever called to your attention? A. No, and it isn't true.

THE COURT: You are not asked whether it is true or not.

WITNESS: I'm sorry, Your Honor.

THE COURT: The only question is whether or not it was called to your attention.

MR. PERMAN: I have no objection to that answer standing.

MR. McKEON: I move it be stricken out, the last part of it.

THE COURT: The last part of it may be stricken.

Q. If that was a finding of fact that was made by Judge Wahlstrom do you now say that you and Mr. Coe found real companionship in each other in the course of the trips you testified to prior to 1939.

A. We certainly did.

Q. Now with reference to those trips, Mrs. Coe #1, do you ever recall being in Beattie, Nevada in 1937? Do you now say that you were not in Beattie, Nevada in 1937? A. I was not.

Q. You were not? A. No.

MR. FUSARO: May I interrupt for a moment, please. If counsel does not object, I should like to put on a medical witness I have. In view of the present situation with respect to doctors here in the city, it is pretty hard for them to wait around. Do you have any objection?

MR. PERMAN: All right.

DR. HAROLD K. BRIGHAM, sworn by Court, testified as follows:

Q. BY MR. FUSARO: What is your name, Doctor?

A. Harold K. Brigham.

Q. And you are a physician? A. I am a physician.

THE COURT: B-r-i-g-h-a-m?

WITNESS: B-r-i-g-h-a-m.

Q. And your office is located where, Doctor?

A. 36 Pleasant Street, Worcester.

Q. What has been your medical education, training and experience?

A. New York Medical School, Flower and Fifth Avenue Hospitals, New York City in 1920. I have practiced general medicine ever since.

Q. And you are engaged in general practice, are you?

A. I am engaged in general practice.

Q. When did you first see Mrs. Katharine C. Coe?

A. September 25th, 1944.

Q. And did you obtain a history from her at that time? A. I did.

Q. What history did you obtain?

THE COURT: 1944, that is the first time you saw her?

WITNESS: That is the first time I ever saw her.

Q. And the date again? A. September 25th, 1944.

Q. Tell us the history you received at that time, Doctor.

MR. PERMAN: Objection.

THE COURT: He may answer. MR. PERMAN: Exception.

Q. His Honor said you may answer.

A. I will read these notes I have here. "Appendix removed three years previous," that would be 1941. "Drains were used at that time. She was in the hospital two and one-half months. There was no distress in the scar region until the last two weeks. Patient then had, she stated,

twinges of pain in that region. Must sit up when turning in bed. Was practically all right last night. Sleeps, poorly anyway. This morning did not get up because of pain. No nausea, no vomiting; ate well today. Bowels have needed Hinckle's", a laxative tablet, "every three or four days. They then were regular. Heart pains began last week and have been present during the past two years. Were in the cardiac heart region. Did not go up to the shoulder." That has a significance, of course, with cardiac pains. "No weight lost." The rest of these notes concern physical examination.

Q. Now you tell us what examination you made and what your examination revealed.

THE COURT: May I interrupt for just a moment. The Doctor said that that has a significance in cardiac conditions.

WITNESS: You might wonder why I put down "did not go up to shoulder." Sometime these pains in the heart region go up to the left shoulder and down the left arm to the finger tips. That is why that note was put in there, "did not go up to the shoulder."

MR. PERMAN: May I interrupt to clarify something, Your Honor, I'm not sure that I understood?

THE COURT: Yes.

MR. PERMAN: When you were referring to the pains that were referred or not referred to the left-shoulder, was that part of the past history for the prior two years?

WITNESS: That was history I obtained on the 25th of September.

MR. PERMAN: Well, was that an immediate past history, or was that a past history covering two years?

WITNESS: I have no indication here as to whether it was one or the other. I just asked the question and the answer was "No."

MR. PERMAN: I see.

Q. All right, Doctor, you may now tell us what examination you made and what your examination revealed.

A. Listened to heart. I took the blood pressure; I took a hemoglobin estimation, and did an abdominal examination.

Q. And what did you find, Doctor?

A. Blood pressure 96 over 70. Hemoglobin 65 plus, per cent. Abdominal examination reveal pain on pressure to the right of the scar, which is an oblique scar at McBirney's point.

Q. Did you make a diagnosis, Doctor?

A. At that time I considered that—

THE COURT: McBirney's point is a point half way between—

WITNESS: The crest of the iliac bone one-third of the way up, nearer one-third.

THE COURT: Half of the way up?

WITNESS: One-third, it is.

MR. PERMAN: Which is the signpost in appendectomy, is it not?

WITNESS: That is correct. It is the signpost in appendectomy pain. I considered at that time that her abdominal pains were due to the possibility of intestinal adhesions following the appendectomy in which drains had been used, in which case there is a great deal of trauma from the drains used, following appendix removal. I also considered that there was some cardiac weakness of a muscular type. Anemia present, for which I gave her specific medication.

Q. Does that complete the diagnosis, Doctor?

A. She was very nervous at that time, as I recall it. I have no mention of that in these notes.

Q. Now the blood pressure indicated what? It was 96 over 70.

A. Blood pressure being 96 would indicate lowered blood pressure due to the lowered hemoglobin and a general weakened condition, a general weak condition.

Q. And what would you expect the blood pressure normally to be in a woman of her age. A. Over 90.

Q. Now the hemoglobin you got was 65 plus. That indicated the presence of anemia, that right? A. That's right.

Q. What is normal? A. Normal for a female should be 75 to 80 plus.

MR. PERMAN: I didn't get that.

WITNESS: 75 to 80 percent normally, and it may be higher. But that is the lowest for normal.

Q. Did you prescribe treatment and render advice?

A. I gave her medicine and I prescribed medication for her, yes.

Q. You saw her again when?

A. I saw her again on the 9th of October 1944.

Q. Where? A. At her home.

Q. Did you get an interval history? A. Yes.

Q. What was it?

A. The history she gave me at that time was that she had had pain in the heart region the day previous to my visit. Severe cardiac pain. She was sweaty and faint, and then became unconscious. The pains were in the heart region and in the region of the left shoulder. There was pain in the abdominal area with nausea and vomiting. She was in bed when I saw her.

Q. And tell us, Doctor, did you make an examination?

A. I listened to her heart, took her blood pressure and palpated the abdominal and stomach region.

Q. And what did you find?

A. Found that her heart was about as it was before, but more rapid at that time, and there was pain around the scar and in the abdominal and stomach region on palpation.

Q. Did you have any diagnosis different from that you had previously made?

A. The fact that her pain had gone up to the left shoulder rather indicated that her heart condition might be of an angina type rather than a pure muscular type.

Q. Did that indicate a progression of the heart condition since your previous visit? A. Yes.

Q. The pain radiating from the heart up into the arm and shoulder would indicate what disturbance with the heart? A. That type of pain.

Q. Yes.

A. Indicates an angina type of cardiac distress, or a true coronary occlusion; coronary heart disease.

Q. Did you advise Mrs. Coe with respect to her condition and her activities? A. Yes.

Q. What advice did you give?

A. Rest and lack of over-exertion, and recommended a diet for her.

Q. Now did you make an additional examination after that?

A. Yes, I examined her on the 22nd of February 1945.

Q. All right. Tell us what history you obtained between the previous visit and February 22nd.

A. "The cardiac pains have been present about twice a week since the visit. Has been careful and has not over-exerted herself because of dyspnoea," that is shortness of breath. "Has noticed that she has had deep breathing. Tired when walking or working. Dyspnoea on climbing

stairs. Sleeps poorly, two to three hours only. Cramps in left foot, in the arch, for the last two months. Dizzy. Dizziness about twice a week. Heart pain accompanies it. Must lie down and rest. With these attacks, loses her sight temporarily." That is the history.

Q. Now you examined her, did you not? A. Yes.

Q. Tell us what your examination disclosed.

A. "Examination revealed blood pressure of 114 over 80. Her heart, apparently no enlargement on percussion. Rate 84. Musculature weak. Sounds are distant. Systolic murmur at the apex; tachycardia," which means a rapid heart action, "pronounced on exercise. Dyspnoea on exercise." That is the complete physical examination.

Q. As compared with your previous examination, Doctor, what did you find with respect to the heart?

A. The heart sounds were not of such good quality as had previously been the case. The blood pressure was higher. Murmur was present at the apex, which signifies a leaking valve. On exercise accompanying the heart examination there was pronounced shortness of breath and sighing respiration; deep breathing, which she had complained about herself.

Q. And is shortness of breath a symptom of a heart condition?

A. Yes.

Q. In this case? A. In this case, yes.

Q. And is the dizziness that you have received in your history another symptom of heart condition? A. Yes.

Q. And is dyspnoea on going upstairs, another indication of a heart condition? A. It is.

Q. Dyspnoea is shortness of breath?

A. That is shortness of breath on exertion.

Q. And these pains that she has over the heart, radiating up into the arm, is that another sign of a heart condition? A. It is.

Q. Now your finding of a weakened valve indicates that condition is getting better or worse? A. Indicates that the condition is getting worse.

Q. And your final diagnosis is what?

A. Final diagnosis, generalized myocarditis, mitral regurgitation.

Q. By generalized myocarditis, you mean general weakness of the muscles of the heart?

A. Yes, general weakness of the muscle of the heart, weak heart muscle.

Q. And the mitral regurgitation?

A. Means a leaky mytral valve, where the valve does not close properly and the blood rushes back through the partially closed valve.

Q. In view of the condition that you have for final diagnosis, general myocarditis and mitral regurgitation, what is your opinion with respect to this woman's ability to perform work for wages or profit?

A. I don't think she is a good subject to work, with a cardiac condition such as she has.

Q. Is it your opinion that she should refrain from work?

A. That is my opinion.

Q. And is there any cure for her heart condition in your opinion, or is it permanent? A. Or is it what?

Q. Or is it a permanent condition?

A. I don't think these conditions are curable.

Q. That is, it is your opinion that it is permanent? A. That's right.

Mr. FUBARO: You may inquire.

Q. BY Mr. PERMAN: You give a past history, Doctor, extending back to an apendectomy several years prior? A. Yes.

Q. In the course of that past history were you informed that Dr. Simmons attended Katharine Coe? A. No.

Q. Did you at any time confer or consult with Dr. Simmons with reference to her past history? A. No.

Q. But you did get a history, did you not, of heart complaints extending two years prior to the time when she first consulted you?

A. That is right.

Q. Is that right? A. That is right.

Q. The condition of the heart that you described, Doctor, is a progressive ailment is it not? A. Yes.

Q. It is one that you would normally and naturally find after a condition that had existed prior for some extended period of time?

A. The question doesn't mean anything to me. What condition existing prior?

Q. Heart condition, symptoms referable to the heart. A. Yes.

Q. Did you at any time have a cardiograph or cardiogram taken. Doctor? A. No.

Q. Are there other means that can be used to obtain a clear and accurate condition with reference to the heart?

A. The electro cardiograph is sometimes taken, and physical examination, history and physical findings make the diagnoses.

Q. You found, Doctor, that she was extremely nervous when you saw her?

A. I found that she was nervous. I don't believe I stated that she was extremely nervous.

Q. If in 1942, Doctor, a diagnosis was made that she was highly neurotic, would that have any bearing on the condition that you ascertained? A. Not on her cardiac condition.

Q. Would it have any bearing with reference to any other features of her physical condition?

A. A person in a highly neurotic state might have stomach upsets, abdominal pains, diarrhoea and other symptoms.

Q. You found, Doctor, that there was no enlargement of the heart?

A. Yes.

Q. What do you mean by that? That there was or was not an enlargement of the heart?

A. I found that there was no enlargement; that means the heart is not enlarged on percussion.

Q. What is the significance of an enlarged heart as compared with a heart that is not enlarged?

A. The significance lies in the fact that if the heart has over-exerted itself extremely there is dilation and enlargement of the muscle walls. In this case I found no enlargement on percussion.

Q. Can you tell us, Doctor, what the causes were that gave rise to the condition that you found in 1944 and 1945?

A. I believe that the abdominal condition could be traced to the operation, and as I stated I believe there is a possibility of abdominal adhesions existing. As far as the cardiac condition is concerned, I cannot suggest why it is present.

Q. Now with proper and adequate rest and diet, Doctor, that condition should improve, should it not?

A. That is impossible to state whether there would be improvement or not.

Q. Well with adequate care and diet, Doctor, you could not now state whether at some time in the future this woman could do any work that did not involve physical exertion?

A. I don't believe at the present time she is able to do any work; but I don't know what the future will bring forth.

Q. You don't know what her condition may be a year from now?

A. My belief would be that it would not be improved.

Q. Even with care and diet? A. Even with care and diet.

Q. Can you state beyond the year? A. No.

Q. You did not see her, I take it from the record, Doctor, between October 9, 1944 and February 22, 1945? A. That's right.

Q. Did she tell you on February 22, 1945 that she was in the midst of litigation, Doctor? A. No.

Q. Would litigation have any tendency to accelerate or exacerbate the heart condition she might have had?

A. It would be apt to cause palpitation of the heart, nervousness, anxiety, worry.

Q. You did find those symptoms, did you not?

A. I didn't question her particularly. You are asking me what it might do, and I am telling you.

Q. But you did— A. I found the palpitation and the tachycardia.

Q. And you did not question her particularly as to the other?

A. No.

Q. Did you at any time examine the hospital record of Katharine Coe, of 1940, with respect to her then heart condition?

A. No, I knew of no hospital record.

Q. You knew of no hospital record? A. That's right.

MR. PERMAN: That is all, Doctor.

(RECESS. HEARING RESUMED)

Q. BY THE COURT: Doctor, I wanted to ask one question. It is partly just curiosity. Is a hemolytic streptococci infection the commonest cause of that sort of heart condition, at some previous time?

A. The cause of myocarditis or chronic inflammation, as we term it, or chronic fatigue of the heart muscle, we might also call it a tired heart, is caused by over-exertion, over-fatigue rather than definite infection.

Q. Perhaps I had in mind more the condition—

A. You had in mind inflammation of the internal lining of the heart, with a large number of valves leaking—

Q. Yes, that is what I had in mind when you spoke of the leaking valves.

A. Yes. I believe in this woman's case, for your information, that the mitric regurgitation probably has been caused by the weak muscles of the heart causing the valves not to function properly, rather than due to any rheumatic heart disease or any such condition as that.

MRS. KATHARINE C. COE, resuming stand, continued to testify as follows: ○

Q. BY MR. PERMAN: (Cont'd) Mrs. Coe #1, do you recall that in your original petition for separate support dated January 11, 1941, you there charged that Mr. Coe had deserted you? A. I don't remember.

Q. That is your signature, is it not (handing paper to witness)?

A. Yes.

(RECESS. HEARING RESUMED)

Q. It is dated January 11, 1941? A. Yes, it is.

Q. And it alleges, "The wife of Martin V. B. Coe, of Worcester, that her said husband fails without just cause to furnish suitable support for her and has deserted her"? A. That is right.

Q. At the time you filed this petition the 11th day of January 1941, did Mr. Coe in fact desert you?

MR. FUBARO: I pray Your Honor's judgment. That already has been adjudicated, Your Honor.

THE COURT: It has been already adjudicated—but it might have some other bearing. He may have it.

Q. The Judge says you may answer, Mrs. Coe #1.

A. Well, can I answer he had taken an apartment in New York and that I was living in Worcester, and that he would come some week-ends?

Q. Can you tell us, Mrs. Coe #1, whether on January 11, 1941, Mr. Coe did in fact desert you? A. Well, I couldn't answer that.

Q. You couldn't answer that. At the time that you signed that petition for separate support had you then disclosed to Mr. McKeon, your attorney, all the facts with reference to the relations between yourself and Mr. Coe? A. I believe so.

Q. And as a result and following that disclosure, you then signed and had this petition for separate support filed on your behalf?

A. I believe so.

Q. You did then make a full disclosure to Mr. McKeon, did you not?

A. I believe so.

Q. If in fact Mr. Coe did desert you on and prior to January of 1941, where did he go?

A. Well, he told me he was in New York; I don't know where he went.

Q. In New York, and did you learn at a later time where the address in New York was?

A. I think he testified during the trial; I'm not sure.

Q. No, I am asking you, Mrs. Coe #1, whether you at a later time learned of Mr. Coe's address in the City of New York?

THE COURT: Well, she might have meant that that was when she did find out.

Q. You heard what His Honor said? A. Yes, I did.

Q. Is that what you meant?

A. No. I found a receipt for the apartment.

Q. I am asking you when Mrs. Coe. A. I don't know just when.

Q. Well, it was prior to the hearing of March 1942, was it not?

A. I believe so.

Q. And you recall furnishing some information to Mr. McKeon as a result of which interrogatories were filed to Mr. Coe?

MR. FUSARO: I object to that. Naturally she wouldn't know. Counsel don't consult with a client about filing interrogatories, or why they are being filed.

THE COURT: I don't think that the question necessarily brings out that answer or that fact. It asks merely were they filed.

MR. FUSARO: As a result of the information she imparted to him. Was that in your question? (Stenographer reads aloud question)

THE COURT: That wouldn't necessarily follow. I thought you asked were interrogatories filed and—

Q. Were there, Mrs. Coe #1, some interrogatories filed on your behalf, directed to Mr. Coe, concerning his residence in the city of New York? A. There may have been.

Q. Now if those interrogatories were filed prior to April of 1941, can you now fix the date when you discussed or furnished the information to Mr. McKeon concerning Mr. Coe's residence in the city of New York?

A. No, I couldn't.

Q. Well, it is your recollection that that information was obtained by you prior to April of 1941? A. I couldn't say.

Q. Well, I show you these interrogatories. You see the reference to 141 East 56th Street? A. What number interrogatory is that?

Q. #9. A. Yes, I see it.

Q. And I show you the date of filing, March 21, 1941. A. Yes.

Q. Now having in mind the date of the filing of those interrogatories as of March 21, 1941, can you now state about when you learned that Mr. Coe had been living in New York? A. Sometime in 1940.

Q. Can you place it a little more accurately than that?

A. Probably about the middle of the summer of 1940.

Q. Now do I understand that between March 25, 1942 and September 19, 1942, you at no time saw Mr. Coe? A. I saw him September 19, 1942.

Q. Was that the first time since March 25, of 1942? A. Yes, it was.

Q. And when you refer to the date of September 19, 1942, you are referring to the date when you obtained the divorce in the state of Nevada?

A. It was at Carson City, yes.

Q. Carson City in the state of Nevada, is it not? A. Yes.

Q. Directing your attention to September 19, 1942, you obtained a divorce on that date and succeeded in having Mr. Coe's complaint for divorce dismissed?

MR. McKEON: I object.

THE COURT: Because that was the finding of the Court, you mean?

MR. McKEON: Yes, Your Honor.

THE COURT: Well, I suppose it is true anyway.

MR. PERMAN: This is purely preliminary to something else, if Your Honor please.

THE COURT: I see no harm in it.

MR. McKEON: I don't either.

THE COURT: You may have it as a preliminary question.

Q. The Judge says you may answer. A. Yes.

Q. When you succeeded in obtaining a divorce in the state of Nevada and the dismissal of Mr. Coe's complaint for divorce, is it true then that you satisfied the purposes for which you went to the state of Nevada?

MR. FUSARO: Well, I'm not sure I understand that. May I have it re-read, Your Honor?

THE COURT: Yes (Stenographer reads aloud question)

MR. McKEON: I object for the same reason.

THE COURT: I think this question calls for more than that. It in effect asks the witness if that was her purpose in going to Nevada, and if that was the accomplishment of her purpose.

MR. PERMAN: Your Honor will recall the testimony of day before yesterday when she did state her purposes in going into the state of Nevada.

THE COURT: Yes, I recall her testimony. Well, just what do you object to in the question, Mr. McKeon?

MR. McKEON: I object to the conclusion that she caused a dismissal of the plaintiff's complaint. All that is needed, it seems to me, is a reference to that date and the proceedings, without any issue being raised that may later be argued on some parts of this evidence.

THE COURT: Well, of course at least in securing the divorce that was her act.

MR. McKEON: But that was not in the question.

THE COURT: Yes, that was in the question too. There may be some question whether securing the dismissal was her act or the act of the Court.

MR. McKEON: Or somebody else's.

THE COURT: Or somebody else's. I think for that reason I would have to eliminate that from the question.

Q. When you, Mrs. Coe #1, obtained a divorce in the state of Nevada on the 19th day of September, 1942, at which time Mr. Coe's complaint for divorce was dismissed, did you then accomplish the purposes for which you went to the state of Nevada? A. Yes.

Q. Then it is true, is it not Mrs. Coe, that the receipt of \$7500 and the contract with reference to property settlement was something that you did not expect to accomplish by going to the state of Nevada?

A. Well, I hadn't thought about it.

Q. You were then getting something more than you expected to accomplish? A. If you put it that way.

Q. Well, that is so, is it not?

A. My main purpose was to obtain a divorce.

Q. That was your main purpose, to obtain a divorce—that right?

A. That's true.

Q. Now if your main purpose was to obtain a divorce how did the matter of defending Mr. Coe's complaint for divorce arise between you and the attorney you selected? A. Well, I just told him my story.

Q. You just told him your story? A. That's right.

Q. And then you left the further proceedings to his sound discretion and judgment? A. Yes I did.

Q. You had ascertained, had you not, as a result of talking with officials in the Chamber of Commerce, that Mr. Edwards was a former Judge of the District Court in the state of Nevada?

MR. MCKEON: I object.

WITNESS: I didn't know that.

MR. MCKEON: Wait a minute.

THE COURT: Well, she has answered she didn't know it. I think it may stand.

Q. Had you learned since that Mr. Edwards was a former Judge of the District Court of the state of Nevada?

A. I don't believe anyone told me.

Q. As a result of the information you received in the state of Nevada, you had complete trust and confidence in the integrity of Mr. Edwards, did you not? A. Yes.

Q. That contract for property settlement, you were handed that contract during the course of the trial in the District Court at Carson City, Nevada, weren't you? A. Is that that blue paper?

Q. The property settlement contract.

MR. FUSARO: If Your Honor please, we call it the Nevada agreement, so there won't be any question about it.

THE COURT: If she knows what that is, and if she knows it better by that name. Do you know it better by that name?

WITNESS: Yes, if it is the paper with the blue cover on it there I believe I brought it back to Worcester.

MR. FUSARO: I don't think it has been introduced in that fashion. It has been introduced in evidence through the record Exhibit B; I think. Your Honor will recall the certified copy of the record of the Nevada Court.

THE COURT: Yes, I remember it; but evidently there is some doubt in her mind as to what he is talking about.

WITNESS: Well, I didn't read it, but I know it has a blue cover, with a red stamp on it I think.

MR. PERMAN: May that be stricken out?

MR. FUSARO: I agree that that may go out.

THE COURT: All right. I think if you are going to ask her the question, you should identify the paper sufficiently so that the witness will know.

MR. PERMAN: Very well, Your Honor.

Q. Referring to the property settlement contract as the Nevada agreement, you were handed a copy of the Nevada agreement in the course of the trial at Carson City, Nevada, on the 19th day of September, 1942?

A. It is possible.

Q. Well, I will read you this question by Mr. Edwards: "You and your husband have entered into a written agreement settling your property rights? Answer: Yes."

MR. McKEON: I object.

Q. Does that help you to refresh your memory as to what occurred in the trial of the divorce proceedings at Carson City, Nevada on September 19th, 1942? A. Well, I don't remember, Mr. Perman.

Q. You don't remember? A. No.

Q. Question to you by Mr. Edwards: "I offer you a copy of that agreement. Is that the document in question? Answer: Yes." Does that refresh your memory as to what your testimony was with reference to the Nevada agreement in the course of the trial at Carson City, Nevada, on September 19th, 1942?

MR. McKEON: I think you didn't read that accurately. You mixed up two questions. I object.

THE COURT: If that is your objection, that he did not read it accurately, I will inspect it, if he read from some paper.

MR. McKEON: From Page 34.

MR. PERMAN: I have it. Would you like to have the stenographer read the question so it can be checked on?

THE COURT: Yes. Now will you tell me the line.

MR. PERMAN: 8th line from the bottom, I think, counting the last word as a line.

(Stenographer reads aloud question)

MR. McKEON: I withdraw the objection.

Q. You may answer. A. I may have said it.

THE COURT: Well, actually he didn't ask you if you said it. He asked you if it refreshed your recollection.

WITNESS: No, it doesn't, Your Honor.

Q. Did you on September 19th, 1942, in open Court ask the Nevada Court to adopt and approve and ratify this agreement, referring to the Nevada agreement? A. I don't remember saying that.

Q. Would you say that you did not? A. I wouldn't say I didn't; but I can't remember saying that.

Q. You can't remember saying anything like that. All right. Now do I understand that after this divorce hearing you had \$7500 that you received from Mr. Coe? A. That's right.

Q. And you went down there with \$1500? A. I had about that.

Q. And you paid no counsel fees out there? A. No, I did not.

Q. You did not pay any counsel fees to Mr. Edwards, that right?

A. That's right.

Q. Did you stay in Nevada for some period of time?

A. I arrived August 25th and I believe I stayed there until the end of September, I guess. I was back in Worcester around the first of October.

Q. Did you between the time of your arrival in Carson City and your return back to Worcester leave the country?

A. My arrival in Carson City?

Q. That's right. A. You mean on September 19th?

Q. You arrived there first sometime in August, did you not?

A. Yes, I did.

Q. 1942. A. I arrived at Reno.

Q. Between that time and the time that you returned to Worcester did you leave the country? A. The United States? No, I did not.

Q. Did you take a trip into Mexico? A. No, I did not.

Q. Did you send a postcard to anyone in the city of Worcester from Mexico? A. I did not.

Q. Do you know a Mrs. Carpenter in the city of Worcester?

A. Mrs. Carpenter? What is her first name?

Q. Do you know a Mrs. Carpenter, can you identify anybody in the city of Worcester by that name?

A. I may know several. If you tell me what the first name is.

MR. FUSARO: You ask for the address?

WITNESS: Yes, I ask for the first name.

MR. FUSARO: May we have the address of the person so she can be identified?

THE COURT: Well, he asked if she knew a Mrs. Carpenter, and she said she knew several.

MR. FUSARO: That's right, and she asked for the address.

THE COURT: Yes, but I see no reason why that question and answer should not stand until then. We will see what he puts now.

Q. Did you send to any Mrs. Carpenter in the city of Worcester a postcard from Mexico? A. I did not.

Q. All right. When do you say you arrived back in Worcester following September 19th, 1942?

A. About the first week in October.

Q. And how soon after that did you see Mr. McKeon?

A. I don't know. Probably a few days, I guess; I don't think it was long.

Q. Did you then make a complete disclosure to Mr. McKeon?

A. Yes, I did.

Q. Of everything that happened in the state of Nevada? A. Yes.

Q. And everything that happened during his illness? A. During?

Q. During Mr. McKeon's illness.

A. Would you repeat the question, please?

MR. PERMAN: Well, that may go out.

Q. Did you make a complete disclosure of all events that happened since you received the papers, the summons concerning the Nevada divorce proceedings that were instituted by Mr. Coe?

A. Well, I told him the story.

Q. You told him the whole story? A. I believe so.

Q. That right? A. I believe I did.

Q. Did you then get some advice from Mr. McKeon concerning the Nevada proceedings? A. Yes, I did.

Q. And as a result of those proceedings, as a result of that advice did you at some time later institute these petitions for contempt and modification?

MR. FUSARO: Now just a moment; I object.

THE COURT: What is your objection, Mr. Fusaro?

MR. FUSARO: Well, if Your Honor please, of course counsel have instituted these proceedings and he is assuming that as a result of that information that she enumerated—well, of course counsel may have had the information together with information they may have obtained from investigation, in preparing these. I don't think it was the result of her disclosure alone. As a result of this talk did you do this. That's the part I object to.

THE COURT: I think what you state is very true, that it might be on other information; but I see no harm in asking the witness that.

MR. FUSARO: Very well, Your Honor.

THE COURT: And the witness might state that it was on that information or on other information.

MR. PERMAN: I will withdraw the question.

Q. Following your conference with Mr. McKeon after your arrival back in Worcester, did you at some time later, some later time sign petitions for contempt and modification which you understood would be filed in this Court? **A.** I believe I did.

Q. And was it as a result of the advice that you received from Mr. McKeon that you alleged in those petitions that you were the wife of Martin Van Buren Coe? **A.** Yes, I did.

Q. Did you at any time between September 19th, 1942 and the time when you signed those petitions for contempt and modification offer to return the sum of \$7500 to Martin V. B. Coe?

MR. McKEON: I object.

THE COURT: Well, she claims that she was induced by fraud to enter into the contract in Nevada. For that reason I think it is admissible.

MR. McKEON: I would like to be heard.

THE COURT: I think it is permissible for him to attempt to show whether or not she offered return of the money.

MR. McKEON: What Your Honor has stated I fully agree with. If Mrs. Coe was seeking to act here in affirmation or approval of the Nevada contract; if she was seeking in her petition to affect it in any way, set it aside for fraud or what not. Now she is not. The Nevada proceedings are brought in here affirmatively by Mr. Coe, and he and he alone seeks to rely upon them and set them up affirmatively, and accepts the burden of proving each element in the attempt to establish the validity of the decree out there, including the contract. This petition is brought against the Nevada transaction. It is brought under a specific grant of jurisdiction by Chapter 208, Section 32. It is not . . . to any parties, including these two parties, to oust the Court of its jurisdiction under that section. At the worst, from the petitioner's viewpoint, the contract and the \$7500 is entitled to be considered as one fact and one fact only in these proceedings. That, as I understand, is a matter of law, not a matter of discretion—not even a matter of doubt, if I may say so. It is consequently true,

as a matter of law, that in these proceedings she has no obligation as a matter of law to return the \$7500, to offer to return them, or do anything of the kind. Now the case—there are several cases, but the case which establishes that is *Bradford vs. Bradford* in 296.

THE COURT: Supposing we consider it after lunch.

(HEARING SUSPENDED UNTIL 2 P.M.)

P. M. SESSION:

MR. MCKEON: May it please the Court: Continuing the *Bradford* case, the petition for separate support, Chapter 209, Section 32, which is the same Chapter and Section upon which the modification of the original decree is likewise based: The divorce was invalid. A finding was made that the parties, through a trustee, entered into a valid separation agreement. The agreement was that \$15 per week would be paid to the trustee. Some three years after the respondent notified the petitioner that he was going to reduce the payments to \$7 per week. The judge ruled that the separation agreement by modification was based upon the continuance of the marriage status. He further ruled that the separation agreement was not a bar to this petition, and he stated he had considered it as a part of the evidence when passing upon the merits of the case. Then Mr. Justice Qua refers to *Wilson vs. Caswell*, 272 Mass. 297, in which court opinion full consideration of the precedents held that "a separation agreement did not take away the power of the trial court to proceed in the exercise of the jurisdiction conferred upon it by statute, although such an agreement in connection with other circumstances proved might furnish a reason for refusing relief."

And on Page 302 in that case: "Husband and wife cannot by contract deprive the Probate Court of jurisdiction to modify a decree of alimony; or of power to consider their relation in connection with their contract and all other facts material to the issues properly before it in providing for the maintenance of wife or minor children, although the exercise of its jurisdiction may change in some respects their situation as contemplated by the contract."

This language applies to the present petition. That Judge gave to the broken agreement all the consideration to which it was entitled when he took it into account as one of the facts in the case. Now that, briefly, is the substance of the *Bradford* finding, which seems to squarely apply to this petition.

THE COURT: And there is a similar case since then.

MR. McKEON: The Schilenger case is quite different. There was a statute . . . I think it was a petition to modify an agreement, not a decree. It did not involve jurisdiction under Section 32 of Chapter 209.

THE COURT: That is right. I heard the Schilenger case, Mr. McKeon.

MR. McKEON: I know you did. I am sure if I had it here I could point out several vitally different facts.

THE COURT: Well granting this were in Massachusetts, a wife has the right to the protection of both the contract and the decree in Court. I think that is the law of the whole line of decisions, and as I remember her testimony an inference might be drawn in fact that it was her claim that there was fraud in entering into the contract. Now it would seem to me that in any event the validity of the contract is an element in this trial.

MR. McKEON: I don't deny that. What I am trying to say is, assuming it is valid, it isn't a bar. It is only one of the elements to be taken into consideration.

THE COURT: Yes. Well, at least it is an element.

MR. McKEON: That's right.

THE COURT: If she claims that the contract is not valid, it should be open to the respondent to introduce evidence to show that it is valid.

MR. McKEON: I'm sorry; I still think that is not so.

THE COURT: If what you say is true, then he couldn't meet your evidence at all.

MR. McKEON: Yes he could; he could. He starts out by alleging affirmatively this decree of divorce, including this contract. He doesn't set them up as two separate, independent contracts.

THE COURT: Well, I understand he does.

MR. McKEON: No. I am sure if you will read that plea in bar you will see he says reliance is made upon the decree of divorce including the contract. He did so in his opening.

THE COURT: Can you find it for me, Mr. Sheriff? (Sheriff searches for plea in bar)

MR. McKEON: May I read it—substituted plea in bar?

THE COURT: All right.

MR. McKEON: After "Now comes the respondent," "The respondent says on or about the 19th day of September 1942 the petitioner was divorced from the respondent by decree (etc. reading aloud same)

THE COURT: Now how about the answer?

MR. McKEON: Which answer, please?

THE COURT: If I remember rightly wasn't there also an answer, besides the plea in bar?

MR. McKEON: I think not.

MR. PERMAN: I know of no answer that has been set up to the plea in bar.

THE COURT: Did you file an answer?

MR. McKEON: I think we did not.

THE COURT: Wasn't there talk about it in that very first hearing in July?

MR. McKEON: There was talk about it, and Your Honor allowed him to answer questions not raised in the plea in bar. I am quite sure that is correct.

THE COURT: That is my recollection. Now I am quoting Mr. McKeon, on Page 2 of the transcript of the hearing on July 10th: "There is a respondent's motion to amend his answer to the petition for modification." Then Mr. Perman on Page 4: "So far as the answer is concerned, it is going to involve a number of issues that might not be reached if the allegations of the plea in bar are sustained."

MR. PERMAN: May I at this point, if Your Honor please, point out that in the reading of my amended plea in bar it has been misquoted. That amended plea in bar reads as follows, the quoted part of it: "And that said Nevada proceedings, decree and contract are a bar to the maintenance of these actions."

THE COURT: Read that again.

MR. PERMAN: "And that said Nevada proceedings, decree and contract are a bar to the maintenance of these actions."

MR. McKEON: May it please the Court, I would like now to inquire whether the respondent claims that he is setting up more than one issue on his plea in bar.

THE COURT: Have you the word "is" in the next to the last line, or the word "are"?

MR. McKEON: "Is" is crossed out and "are" is written in above. Now it is of extreme importance in my opinion if the attorney for the respondent states he is raising more than one issue. I say that raising more than one issue in the plea in bar requires that it be over-ruled as a matter

of law. He cannot have more than one issue. Either this is one issue in the plea in bar or it isn't a plea in bar at all but something else. As a plea in bar, if he asks the Court to treat it that way, it must be overruled as a plea in bar.

THE COURT: Do you mean if a party sets up two different matters, either one of which would be a bar to the action, that the plea is not good?

MR. MCKEON: It is no longer a plea in bar, as a matter of law. He is required to deal with it, and so is the Court, as something else. No one can raise 100 issues in a plea in bar. The whole purpose of it is to find out one single issue that will either defeat the whole proposition or some vital part of it. But he wouldn't have two shots at one plea in bar, or it is no longer a plea in bar. It can't be done. He has to choose about putting it in his answer or somewhere else, but he cannot put it in the plea in bar.

THE COURT: Have you anything to support that?

MR. MCKEON: (to Sheriff) Will you get me 266? Before I forget it, I think there is quite a good definition about it by Judge Lummus in the Superior Court Rule Book, as to affirmative, negative pleas, and in the case I have just sent for, Your Honor, the point was not raised but it was a double I think I have said several times in the discussion if this case that it is not a plea in bar.

THE COURT: I didn't just get that.

MR. MCKEON: I have several times said in the discussions of this trial that this is not a plea in bar. Personally, I have no interest in whether the respondent says I am going to stand on my plea in bar, or whether he says he is going to stand on something else. It makes no difference. Only it is important to know whether he is relying on this as a plea in bar. This is from *Reilly v. Selectmen of Blackstone*, 266 at Page 507: "The proper office of such a plea is to set forth some single fact, the establishment of which will defeat the suit or the part of it to which the plea applies. The first paragraph of the plea sets up a fact; the other paragraphs set up points of law. But the form of the plea was not challenged. It may be treated as a double and defective plea presented and tried without objection."

"This case came on to be heard upon this state of the pleadings. Apparently the single justice at first thought that the hearing was upon the sufficiency of the plea in its several aspects as a matter of law and

not upon the truth of the fact therein set forth. But the plaintiffs persisted in offering evidence and finally the single justice said that he would hear all evidence offered on the insufficiency of the plea. If the sufficiency of the plea as a matter of law was the single matter to be heard, no evidence rightly could be introduced. The ruling that evidence would be received, coupled with the finding at the end of the hearing, leads to the conclusion that the trial was finally had as to the truth of the fact set up in the plea. The plaintiffs cannot complain because instead of challenging the plea as a matter of law and standing upon that ground they insisted upon the introduction of evidence. I find nothing in the evidence to show that this plea is insufficient, and insofar as any facts are alleged here I find them to be true and I sustain the plea. So far as this was a ruling of law upon the sufficiency of the plea as to the allegations of Paragraph 13, it was right. The plea, if true in fact, was sufficient in point of law to be a bar to that part of the bill." The bill—I am trying to do this hurriedly—was a bill in equity I think to restrain the town of Blackstone from expenditure of money under Chapter 44. "The plea set up the fact that these payments had been made before the suit was brought. This in substance and effect was a negative plea and put in issue a single fact or series of facts alleged in the bill and vital to the maintenance of the case as to which the plaintiffs seek relief. This plea, both in form and in substance, challenged the truth of the plaintiff's allegations that the money was about to be paid out illegally by asserting that it had already been paid out. It was not a pure or affirmative plea setting up a fact outside the record. The burden of proof on a negative plea is upon the plaintiff, while the burden of proof upon a pure or affirmative plea is upon the defendant. The burden of proof rests upon the party who has the affirmative of the issue." Well, there are many cases cited in here with reference to a plea in bar. I think this is where I began (indicating and handing book to Court).

THE COURT: I still think, Mr. McKeon, that as long as the petitioner maintains that the contract in Nevada is something she was induced to enter into, or the contract in Nevada by fraud, that I ought to admit the question.

MR. McKEON: I was about to say something further on that, if I may.

THE COURT: Yes.

MR. MCKEON: One issue is whether the contract was made the essential part of the decree in Nevada. Mrs. Coe's answer and cross complaint signed by counsel says in substance we ask that this contract be made a part of the decree. Mr. Coe's reply uses the same words. There hardly can be any mistake that if no one requested the obvious fact is that the Court did make it part of its decree. Mr. Bible in answer to cross interrogatory #12 indicates that the parties contemplated that that contract would be made a part of the decree and then become effective. So that to me it is beyond dispute that in point of fact the Nevada Court made that contract an essential part of its decree. So that after eight days of trial under a plea in bar as this is, with the frequent insistence of the respondent that because it was a plea in bar he has a right to go forward, and because it is a law that a party who demands these pleadings be treated and acted upon as a plea in bar cannot say there are not two issues raised in this which will defeat one or the other. As to the fraud, it is to be borne in mind, I suggest, that this petitioner in her petitions directs no claim whatever of fraud or any other kind to the Nevada decree, to the contract, or if there be a difference, the Nevada proceedings. The Nevada proceedings would never be heard in this case unless the respondent relied upon them and brought them on here. And he does. If that contract is considered by the Court as a fact without any claim by the petitioner the \$7500 ought to be reduced by whatever she may have spent to live on since the question of fraud and doesn't, I suggest, arise except to disprove and not for the purpose of asking any remedy be based on this petition if their petitioner claims they are forced to do so by the plea in bar. She does say that the respondent, beginning here and going to Nevada fraudulently procured the Nevada Court to assume a jurisdiction it did not have. I suggest the \$7500 has no relation or materiality to the question of whether Mr. Coe when he went there fraudulently procured that Court to assume its jurisdiction. May I state something clearly in contention at least. The \$7500 has no relation whether that was fraud or what not. . . . when that complaint was filed he never could have got publication, he never could have got summons on him, he never could have gone out there. It has nothing to do with the \$7500, I suggest.

THE COURT: I would like to point out one thing—no doubt you have taken it into consideration as to the Nevada law that was introduced. I

call your attention now to Section 33, 73 which is quoted, an interrogatory or the answer rather to interrogatory #34: "Either husband or wife may enter into any contract, engagement or transaction with the other or with any other person respecting property which either might enter into if unmarried, subject in any contract, engagement or transaction between themselves to the general rules which control the actions of persons occupying relations of confidence and trust towards each other," and Section 33, 74: "Husband and wife cannot by any contract with each other alter their legal relations except as to property and except that they may agree to an immediate separation and may make provision for the support of either of them and of their children during this separation. In the event that a suit for divorce is pending or immediately contemplated by one of the spouse against the other the validity of such agreement shall not be effected by a provision therein that the agreement is made for the purpose of removing the subject matter thereof from the field of litigation, and that in the event of a divorce being granted to either party the agreement shall become effective and not otherwise." Now as I would interpret that, if that is the law of Nevada, the agreement might be valid even if the divorce was invalid.

MR. MCKEON: I agree that that might be so, but it was not part of the decree. There are cases in which the contract is not made a part of the decree, and it stands upon its own footing. It seems quite obvious that that is not a fact in this case. Briefly, from the Nevada case, "It is our opinion that the trial Court in no instance is bound by the written agreement of the parties to a divorce action." (etc., reading aloud balance of opinion).

THE COURT: Well, as I understand the law of this Commonwealth as to such contracts, and having in mind the decision in *Wilson vs Caswell*, the Court cannot change the contract, but it can change the decree.

MR. MCKEON: I agree that is so. But at the bottom of this is also the question we are dealing with here: Is that a valid agreement and a valid divorce. In Massachusetts this agreement would be void as between husband and wife. It cannot be enforced by the husband in this Commonwealth, however valid it is out there. No husband can enforce this agreement in Massachusetts.

THE COURT: Well, that is a very important point. Have you anything on that?

MR. MCKEON: I don't know whether I have right at this minute, but I have it.

THE COURT: All right.

MR. MCKEON: want this Court to deal with this as a plea in bar raising one single issue, or I want this Court to deal with it as raising two or three issues. Once that is settled we will all have a clearer idea, I suggest, of what we are dealing with, what the respondent asks us to deal with. I have assumed after having listened to the repeated, insistent demands that their plea in bar be heard, that they were standing on the proposition that a plea in bar, must raise one and only one issue. If they desire to raise more than that it is appropriate for an answer and not a plea in bar. That is vital, and we will all be guessing more or less about it until the respondent says I want this dealt with as a plea in bar or as raising two or three separate and independent issues.

MR. FUSARO: I have looked in the papers and I have not found that particular answer. The only answer that was ever found was to the original petition. I ask Mr. Perman to produce copy if he has one, as we have none.

THE COURT: You mean original petition for separate support?

MR. FUSARO: There is an answer to the original but not to this petition for modification. I ask Mr. Perman to produce copy of answer if he did file one. Have you the copy?

MR. PERMAN: I think so. (Hands paper to Mr. Fusaro)

MR. MCKEON: Unless I am unable to read, that is a demurrer.

MR. PERMAN: Well, you might look at the next page.

MR. MCKEON: Assuming it is filed here, there are the same issues raised by 2 and 3 of this answer that are raised in the plea in bar, which is directly contrary to what Your Honor ruled on July 10th. I should say, if I may, I consider that It sets up the contract as a separate, distinct enterprise.

THE COURT: Well, that was in the papers before July 10 and I think I stated at the time that I thought it would be better to hear the case in that manner, and I think I stated, if I remember, repeatedly that in my opinion that would raise all the issues.

MR. MCKEON: I think that is not quite correct in recollection. You said, "I am going to allow you to file your plea in bar. But if you seek to set up the same matter in your answer I will not permit you to, although of course, as I said before, I will permit you to file an answer and will

consider any matters that you may set up in it except what you have set up in your substituted plea in bar. I am going to allow you if you insist to substitute this plea in bar, for the one previously filed, and any matters that you do not set up in this plea in bar, if I consider it competent and proper. I will permit you to set up in the answer; although I don't think you need an answer to go on to a hearing." Now I suggest that technically and accurately Your Honor has not allowed that to be filed as an answer. It was submitted in the first instance as a motion. You then said that you would allow it if you saw fit. You did not say that the respondent could file it without asking your leave so that you might determine whether it raised issues that were previously raised in the substituted plea in bar.

THE COURT: May I see it again? (Paper handed back to Court) This was filed before; I had nothing to do with this.

MR. McKEON: I now suggest whether Your Honor is referring to that particular plea or not it is wholly improper for any respondent to raise issues in a plea in bar that are likewise raised in his answer and have two trials or two decisions. They are inconsistent and incompatible with one another. Either he claims the contract and the decree are one or he claims that they are not one. Perhaps I was in error, but I understood he was demanding in his answer it escaped my attention completely.

THE COURT: Well, this escaped my attention on July 10th at the hearing. I don't think it was called to my attention that all these issues had been raised by his answer.

MR. McKEON: I think that is correct. However, we now have a practical situation to be dealt with. I am only interested in knowing whether the respondent wishes to claim one thing in the plea in bar and the opposite thing in an answer; whether he is to be allowed to claim the divorce decree is valid in the plea in bar and also in his answer, or just what he asks the Court to do in his behalf and what the Court will rule on.

THE COURT: Well, I will rule now that he must rely either on his plea in bar or the answer, and that he cannot rely on both.

MR. PERMAN: Is it Your Honor's suggestion that I make an election at this time?

THE COURT: That you make an election.

MR. PERMAN: May I say something preliminary?

THE COURT: Yes, of course I will hear you on it. Do you want to take time.

MR. PERMAN: I should like to take a few minutes.

(RECESS. HEARING RESUMED)

MR. PERMAN: May it please the Court: The parties originally intended when this matter first came on for hearing to raise by way of preliminary issue and preliminary determination the issue as to whether or not the Nevada proceedings in their entirety as disclosed by the exhibit that is now before Your Honor constituted a bar to the further proceedings for modification and for contempt. There was on July 10, 1944 raised before Your Honor the question of the sufficiency of the plea in bar. If my memory serves me right that question as to the sufficiency of the bar was fully heard and already determined and adjudicated by Your Honor by a decree which allowed it. I think it must be perfectly clear from the proceedings that we had here, especially by virtue of the grounds of objections which were stated by me earlier in this hearing, the nature and grounds of the affirmative matters which this respondent says constitutes a complete bar to the proceedings instituted by the petitioner. Your Honor will recall that there was a discussion at the time of hearing before you on July 10, 1944 with reference to the allegations set up by way of answer; and if I recall correctly Your Honor did state at that time that Your Honor would not permit a double trial by virtue of the plea in bar and by virtue of the answer on the same issues. If my memory further serves me right, I think I then stated at that time, and now state, that it is not my intention to retry twice before Your Honor those matters which we say constitute a bar to the proceedings initiated by the petitioner. Having in mind that there has already been an adjudication with reference to the sufficiency of the plea in bar, it seems to me that after proceeding on the merits for close on to two weeks it is rather late now for the petitioner's counsel at this time to raise any question with reference to the sufficiency of the pleadings. I think I may at this time with reference to technical pleadings generally, as to their nature and effect and the way they should be viewed and determined by Your Honor, direct Your Honor's attention to the case of Kelly vs American Sugar Refining Co., 311 Mass. 617.

THE COURT: (To Sheriff) Do you want to get it? (Sheriff produced volume indicated)

MR. PERMAN: And while that is being brought, I think I can point out that there was a challenge to the validity of a motion to dismiss. The Court there speaks generally of the effect to be given to technical motions. I have in mind the language of the Court there at Page 620. The following

language appears: "If the motion to dismiss was not a strictly proper method of raising this issue it does not follow that there was reversible error in going through the form of allowing it." I am making some omissions as I am reading it, but I am taking the material parts of it. "And the plaintiff was not injured by the course taken. It was the duty of the Judge in any event to decline jurisdiction of the cause in the interests of a proper and efficient administration of justice. The parties could not relieve him of that duty by the form of the papers they filed or even by omitting to file any at all. He was not obliged to wait until he heard the case on the merits. The action taken in its practical effect was right and the final decree was right and was the result to which the case from its very nature must inevitably come. Nothing could be gained from a critical investigation of the mechanics by which this result was reached to say whether they were technically correct." In line with that case and with the attitude taken by the Supreme Court in treating with these motions of a very highly technical nature, they have in a number of cases given the practical effect to a pleading irrespective of the particular name that was applied to it. In the Cockrane vs. Cockrane case, 303 Mass., 467, the language is similar. In the Johnson case, same volume at Page 204, for example, a motion to dismiss was treated as a request for a ruling or finding in order to reach the proper result. In Cassidy vs. Truscott, 287 Mass., 515, a motion to dismiss was treated as a demurrer, and the same result was reached in Greene v. Springfield Safe Deposit & Trust Co., 295 Mass., 148. In the Cockrane case, motion to dismiss was treated as a plea in bar, and in the Brotkin v. Feinberg case, in 265 Mass., 295, a motion to dismiss was treated as a plea in abatement. It was the plain purpose of the respondent to raise as a preliminary matter the legal effect of the proceedings in Nevada, as is disclosed by the exhibit that is now before Your Honor. They are always the husbands, legal husbands, involved in these technical pleas. In the absence of a retrial of the same issues, having in mind that it was the original intention of the parties to determine the legal effect or legal significance of the proceedings in Nevada as to whether or not it constituted a bar to those proceedings, having in mind that there has been an adjudication by Your Honor with reference to the sufficiency of the plea in bar, and having in mind that there already has been a full and complete and adequate disclosure to Your Honor and to counsel of everything that was intended to be relied on by the respondent as to the grounds upon which

reliance is had with reference to the proceedings in Nevada as a bar, it seems to me that Your Honor ought not to require, at least at this time, that the election suggested by Your Honor be made.

MR. McKEON: May it please the Court—

THE COURT: Just a minute. Let me ask you this question: Do you think you should have both through to the end of the trial and to the decision?

MR. PERMAN: I think this, and may I say so in all sincerity, Your Honor:

THE COURT: Yes, certainly.

MR. PERMAN: I don't think that the respondent ought to be allowed to retry the same issues twice by virtue of the fact that there is a plea in bar and an answer. I think now, and I have thought right along that the respondent ought to be allowed to raise by way of preliminary determination the effect of the Nevada proceedings, in so far as they may constitute a bar to the petition for modification and to the petition for contempt. I feel further that in the event it should appear that there was some technical deficiency to that plea in bar, in that event the respondent ought to be allowed to rely on the allegations set up in the answer. That is the purpose. There is no intent to retry twice any of the grounds set up by the respondent as a bar to the proceedings brought by this petitioner. But if one should fail, he ought to legally have the right to then rely upon the allegations set up in that answer. It isn't an unduly precautionary measure; it does no one any harm.

THE COURT: Well, I think the petitioner ought to know, and I think I ought to know on which one you rely. It is my recollection, I may be wrong but it is my recollection that I said on July 10th that I would permit you—let's see if I can find it.

MR. McKEON: I think I may be able to find it. I read it a little while ago.

THE COURT: (After looking at July 10th, 1944 record) Let me read this—and this was my understanding at the time. There was talk about whether or not the plea in bar should be allowed to be filed, and I am reading on Page 9 of the record of July 10th: "The Court: Well, I think coming at this time it is a discretionary matter in any event. Mr. McKeon: If you act on that, that is all right. The Court: I am inclined to think if this was the plea filed at the outset he could proceed on it as a matter of

right; but coming now— Mr. McKeon: I don't understand so if he raises the same thing in his answer. He can't do it twice. The Court: Have you already raised the same question in your answer? Mr. Perman: There is no answer filed. I am going to submit an answer to Your Honor as well. Perhaps Your Honor might— The Court: Well, there is something to what Mr. McKeon says on that, because you then have a right to a hearing on the same question twice. Mr. Perman: No, it is all in the same hearing, if Your Honor please. What Mr. McKeon means by a double hearing is in the event the plea in bar is sustained. The Court: May I see your answer? (Mr. Perman hands paper to Court) Mr. Perman: And there is also a demurrer, a motion for a demurrer. The Court: Perhaps I didn't catch you at first. I didn't know there was an answer filed. Mr. McKeon: Actually there isn't, but there is a motion to file. The Court: There is a motion to file one? Mr. McKeon: Both, that's right. The Court: Well, Mr. Perman, I didn't know that this answer was filed by a motion." And then this followed: "that there was a motion for permission to file this answer and also you are asking for permission to file this plea in bar. You cannot have both of them." And then I said, on Page 13, "Are you content, Mr. Perman, if I proceed on your amended plea in bar that I will then not permit you to file this answer?" And you said, among other things, "I think Your Honor ought to accept both."

MR. PERMAN: May I interrupt to state a recollection of mine?

THE COURT: Yes.

MR. PERMAN: I think somewhere in that transcript, Your Honor, you arrived at the eventual result that irrespective of the technical aspect of the pleadings you would not permit a double trial of the same issues but would see that complete justice was done to both parties so far as the issues were concerned.

THE COURT: That has been my attitude throughout. I think I seem to have had great difficulty in trying to make that clear. Well, we have gone over the time. I will take this along with me and see if I can find how I finally decided it.

MR. McKEON: May I say as a result of the discussion it seems to me that it is quite clear that Mr. Perman is inaccurate when he says there has been adjudication on the insufficiency of the plea. There has been no ruling, and as a matter of law the plea is sufficient, if it has facts so found to be proved. That seems to be quite obvious. All that the Court did was to

allow on motion a substitute plea to be filed. Secondly, it is quite clear that the respondent has now stated to the Court that in his answer he relies upon the decree of the divorce as one thing and the contract as a separate and distinct thing. It is equally clear that he is leaving the Court in the dark as to what his claim is on this so-called plea in bar. I suggest that counsel has not only a legal but a moral responsibility not to say to this Court I claim two opposite and contradictory different things about this contract at one and the same time. I first claim that it is an essential part of the decree and no good without it, and in the second breath I claim that contract is good even if the decree is void. I think that the respondent has an obligation to state his contention and not conceal it beneath a flow of words.

THE COURT: Well, I don't understand that that is so by the answer.

MR. MCKEON: Well, the answer is perfectly clear it is two different things. It is not a part of the plea. But it isn't clear from the plea, as we interpret it, whether he claims in that plea the same as he claims in the answer, that the contract is a separate, independent thing apart from the plea. I think from the reading of it its meaning is that in the plea his contract is necessarily included as a part of the plea in bar. There has been some suggestion, not definite but vague, to the contrary, and before the Court is asked to rule what it is and to deal with it as to what it is, as counsel has argued, without regard to how it is entitled, there should be no attempt to trap the Court into making a ruling without knowing what the respondent says it is.

THE COURT: Well, I will grant you that the plea in bar is indefinite. The answer is not. That is, that the plea in bar is open to two interpretations, as I see it.

(HEARING SUSPENDED UNTIL 10 A.M. FEB. 26, 1945)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

March 12, 1945.

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,
Commissioned Stenographer.

FEBRUARY 26, 1945 HEARING

THE COURT: We were considering, as I remember it, the question of the plea in bar and the answer. Now I am going to read from Page 20 of the record of July 10th. I said this, Mr. Perman: "I don't mean to shut you off, but at the same time I am going to allow you to file your plea in bar. But if you seek to set up the same matter in your answer I will not permit you to, although of course, as I said, I will permit you to file an answer and will consider any matters that you may set up except what you have set up in your substituted plea in bar. I am going to allow you, if you insist, to substitute this plea in bar for the one previously filed. Any matters that you do not set up in this plea in bar, if I consider it competent and proper I will permit you to set up in the answer." Then it goes on to something else. Now on Page 2 this is what you say about your plea in bar. This is at the opening part of it: "There is a plea in bar specifically raising the matter as a preliminary issue. Your Honor understands that this all has been previously tried before Mr. Justice Wahlstrom, and I think in specific answer to your queries as to what was before Your Honor this morning I would suggest that what is before Your Honor this morning is this: Certain interlocutory matters designed specifically to properly present this cause so far as the pleadings are concerned. If Your Honor will examine the record Your Honor will find that on the day the decrees were entered on the petition for modification and petition for contempt and petition for revocation there was an amended petition filed. In order to properly present this cause to Your Honor it occurred to me that the pleadings ought to be in order. Now there was a plea in bar to the original petition for modification. That was amended and there was nothing filed so far as the amended petition." Then there is a break. "There was also raised as an objection originally to the plea in bar that was originally filed that it contained two separate decrees that were not related to each other." I suppose by decrees you mean matters, "and that was one of the grounds of argument urged by the petitioner before the Supreme Judicial Court. To avoid that objection, so that there would be no technical matter involved, I have in my motion to amend the plea in bar merely set up as preliminary defense the Nevada proceedings. I haven't set out the other matters for defense alleged in the original petition for modification which I think goes far towards avoiding any technical objections to that plea." Now let me say this: I stated all through

the record, and made that final statement on Page 20, that I would not permit you to set up the same matters in the answer that I did in the plea in bar. I feel that that is decided. Now I asked you Friday to elect on which you would proceed, and at the close of the hearing you had not done so.

MR. PERMAN: I didn't think we had reached the stage, at that time we had recess, until four o'clock.

THE COURT: Yes, but it was at quarter after three I asked you to elect and took a fifteen minute recess to give you time to elect. Then we came back and there was further argument on it.

MR. PERMAN: That is right.

THE COURT: My point is this: I decided that back in July; I see no reason for changing my decision. You cannot have both. I said you could have a plea in bar and have an answer provided you set up different matters and provided you set up nothing in your answer that was in your plea in bar. Now the answer sets up practically the same matters. That is why I say you cannot have both.

MR. PERMAN: May I inquire as to what the status is at the present time, if Your Honor please?

THE COURT: Well, you filed a plea in bar and I permitted you to.

MR. PERMAN: That's right.

THE COURT: The answer was filed—it was filed late, of course, not filed originally, so you couldn't have it in any event without permission of the Court. Now I say you may have it, but not with your plea in bar. You may have either. You may have one or the other, but not both.

MR. PERMAN: May I have just a moment, Your Honor?

THE COURT: Yes. (Mr. Perman confers with Mr. Mason)

MR. PERMAN: I am submitting to Your Honor an amended answer to the amended petition for modification specifically in view of the fact that the original answer refers to Exhibit 2 which has not become Exhibit 2 in view of the proceedings here, and request that Your Honor allow that to be filed in answer to the amended petition for modification.

THE COURT: Now as to 4, Paragraph 4, I mean in this answer, that question has already been decided by the Supreme Judicial Court.

MR. PERMAN: Not necessarily, if Your Honor please.

THE COURT: I so understand it.

MR. PERMAN: Well, I respectfully submit that we ought to have

the allegation and the answer anyway. I shall in the course of argument develop that a little more fully. Your Honor understands that what there was before the Supreme Judicial Court was merely Exhibit 1-A and 2. The evidence was not, the full evidence was not before the Supreme Judicial Court and we are not concluded by that opinion and set up affirmatively as defense the answer to the petitioner.

MR. MCKEON: I agree in part with Your Honor and in part with counsel for the respondent. Paragraph 4 may or may not be concluded by the one opinion. Nobody can tell in the form in which this is presented which is the truth. It isn't a good pleading if he relies upon any He is obligated to set them out specifically, state what they are, and not refer to them merely as a mere conclusion of law. This present Paragraph 4 in the present form, I submit, should not be allowed, and if the respondent wishes to rely upon what he intends to rely he should state on the record what the acts and conduct are upon which he relies as a bar.

MR. PERMAN: I hadn't finished with the examination of the petitioner, if Your Honor please.

MR. MCKEON: Which is no excuse for not making a proper pleading.

THE COURT: I think the point is well taken. If you allege that any acts of a person constitute a bar to their bringing this petition, it is like, practically, pleading estoppel. You should set up what the acts are that constitute the bar and constitute the estoppel.

MR. PERMAN: But I have not completed, if Your Honor please, with the examination of the witness.

MR. MCKEON: For heaven's sake, do we have to listen to that, Your Honor?

THE COURT: Does anybody wait until the end of the trial of a case to file a pleading?

MR. PERMAN: No, I assume not; but I respectfully submit that with reference to an election—

THE COURT: Issue assignments should be joined before a hearing starts. That is axiomatic.

MR. PERMAN: That is right, Your Honor.

THE COURT: And of course it is discretionary with the Court to permit a pleading to be filed at any time during the trial or even after a trial if some matter arises which is new to the parties or a surprise, or anything along that nature.

MR. PERMAN: But we had maintained that position throughout this hearing. May I say in the interest of time, if Your Honor please, that I shall be glad to detail what we rely on.

MR. MCKEON: Wait a minute.

THE COURT: Well, I wouldn't permit it unless the detail was in the answer; or in other words, it must be substantially set forth.

MR. PERMAN: Yes, I shall be glad to, Your Honor.

THE COURT: Just a moment. (Looks at papers) I will permit you to file this answer which is numbered in red ink 73, in lieu of your plea in bar.

MR. PERMAN: May I have that please, Your Honor.

(Court hands same to Mr. Perman)

THE COURT: That was filed without any permission, of course.

MR. PERMAN: Your Honor will note in this answer that it refers to Exhibit 2, and that was filed at the time I had assumed that Exhibit 2 was part of the record of these proceedings.

THE COURT: That would be so.

MR. PERMAN: Now both answers, it seems to me, in this amended answer I have omitted, if Your Honor please, if you will observe, reference to Exhibit 2. There is set forth, #4 sets up the acts and conduct of the petitioner. May I suggest this: Instead of a number of documents being filed here I said I would amplify that Paragraph 4. I can do it by way of redrafting this answer or perhaps setting up by way of specification to Paragraph 4 the precise acts and conduct relied on as constituting a bar—

THE COURT: Now wait. This contract that you speak of in Paragraph 3 of this answer which you previously filed and which I spoke of as being marked in red ink 73, the contract is in as an exhibit, isn't it?

MR. PERMAN: The proceedings are in as an exhibit in its entirety, including the property settlement contract. But that is Exhibit A or B, now I'm not sure which.

THE COURT: I will tell you what I will do. I will permit you to file this and permit you to file an amendment to this which will state properly the number of the exhibit.

MR. PERMAN: Well, I tried to do that in this amended answer and had made no reference to any exhibit at all.

THE COURT: That is true so far as Paragraph 3. The only reason

I won't allow you to file that is because of Paragraph 4, which is too general in its terms.

MR. PERMAN: Well, may I specify with reference to Paragraph 4, so as to cure that?

THE COURT: I would say yes, but I don't know what you are going to have in mind. I will say yes with reservations.

MR. PERMAN: All right. May the amended answer be allowed subject to filing of specifications with reference to Paragraph 4?

THE COURT: No, I wouldn't put it that way. If you want to prepare another one or have another one ready by this afternoon, I will consider it.

MR. MCKEON: May I suggest, Your Honor, why the respondent should not do it now? We are entitled to know what issues he is going to raise, whether they are any good in law, and if so what they are in fact, so we will know what we are trying to decide here and not be left in the dark by the deliberate conduct of the respondent.

THE COURT: I would be perfectly willing to do that, in order to save time. We have spent far too much time on this case and far too much time on this question which I decided back in last July.

MR. MCKEON: I agree that that is so, Your Honor.

THE COURT: I will permit you to file an answer, this answer here, with the understanding that you will correct the number of the exhibit. When I mention that I mean the one marked in red ink 73. I will permit you to file the amended answer that you submitted this morning if you strike out Paragraph 4.

MR. MASON: Would Your Honor permit us to have a few minutes to specify the grounds under Paragraph 4 so Your Honor could rule on that and counsel for the petitioner would have an opportunity to know what they are before we proceed further?

THE COURT: How long will it take?

MR. MASON: About five minutes, Your Honor. We could state it in the record and then if it were permitted to be filed then Your Honor would probably grant us permission to incorporate that in the written plea and file it.

THE COURT: How long would you say?

MR. MASON: About five minutes.

THE COURT: Well, certainly I will grant you five minutes.

(5 MINUTES RECESS. HEARING RESUMED)

MR. MASON: With reference, if Your Honor please, to Paragraph 4 of the respondent's amended answer to amended petition for modification which was submitted for filing this morning, the Court has indicated that it would desire further amplification of Paragraph 4 before passing upon that. The respondent would specify under Paragraph 4 the following, immediately after the word "action" at the end of Paragraph 4: "For the following reasons, to wit: That said petitioner is predicating relief on admission of her violation of General Laws Chapter 208, Section 42, and that such violation bars her from equitable relief in this action."

THE COURT: That is Volume 6. (Sheriff asked to bring in Vol. 6)

MR. MASON: That is the only ground we specify on that, Your Honor. The remaining acts and conduct which we claim constitute a bar are already alleged in Paragraphs 2 and 3.

THE COURT: Of course this section merely provides a penalty. You seek to set that up?

(Mr. Mason looks at General Laws volume)

THE COURT: I call your attention to this again: I said over and over again as I remember it on July 10th that you do not need any answer in the first place. You do not need any plea in bar. I never heard of an answer in a separate support proceeding either in the original proceeding or in any petition for modification. Matters that are a defense may be introduced in any event, and I said on July 10th that I would consider any and every matter that you might introduce as a defense that was competent as a defense whether you filed an answer or any pleading at all.

MR. MASON: Of course this is somewhat an unusual case inasmuch as modification is sought after divorce decree, and it may be Your Honor is correct in ruling that all of these defenses are open; but insofar as it may be necessary to set up these defenses affirmatively and so that there will be no miscarriage of justice because of technicality of pleadings, the respondent would respectfully request that he be permitted to state the defense affirmatively. Certainly it cannot be prejudicial, if Your Honor please, that the defenses are open anyway.

MR. MCKEON: May it please the Court: I would like to state my opinion that before the respondent . . . this specification you must understand clearly its implications, one of which is he admits Mr. Coe obtained a false, fraudulent divorce, and so forth. Unless that suggestion is made, I suggest he is not entitled to raise it. If he makes that admission, perhaps he is. But certainly the petitioner . . .

MR. MASON: Of course we made no such admission.

MR. MCKEON: We don't ask you to make such admission.

MR. MASON: And if Mr. McKeon wishes to argue the effect of it later, why of course that is open to him.

THE COURT: I would not require him to make that admission if the answer makes that admission and he is bound by it and he takes the consequences of it.

MR. MCKEON: I didn't mean to have him make any admission about it; I merely meant to have him understand what our contention is the effect of his claim will be if he makes it.

THE COURT: That contention will be open to you.

MR. MASON: This answer simply deals with the admission of the petitioner in these proceedings.

THE COURT: I will permit you to file that answer. I don't see any reason why you cannot just add that in ink.

MR. PERMAN: Shall we do that now, Your Honor.

THE COURT: You may do that right now.

(Mr. Mason makes his stated addition to answer in pen and ink, and hands the same to Court)

THE COURT: You had better show that to Mr. Coe, what you have added there over his signature. (Mr. Mason shows same to Mr. Coe; paper is then handed back to Court)

THE COURT (To Mr. Donohue): This may be filed. Now having filed that, all evidence that has been introduced both by the petitioner and respondent is admitted as bearing upon that answer and the plea in bar is overruled.

MR. MASON: Your Honor will note our exception to the over-ruling of the plea in bar.

THE COURT: I would, except that one does not lie.

MR. MASON: For the purposes of the record, we wish to have our exception saved.

THE COURT: Of course you are saving your exception to a purely discretionary matter in permitting the answer to be filed. It was of course always considered that the filing of an answer setting up the same matters automatically, without any action of the Court, over-ruled the plea in bar. That I consider is fundamental.

MR. FUSARO: Do you desire Mrs. Coe on the stand?

MR. PERMAN: Yes, please.

KATHARINE C. COE, resuming stand, testified further as follows:—

Q. BY MR. PERMAN: (Cont'd.) For the purposes of the record, you are Katharine C. Coe? A. I am.

Q. And you are the same Katharine C. Coe that testified last Friday?

A. Yes, I am.

Q. And you are the Katharine C. Coe that has been designated in these proceedings as Mrs. Coe #1? A. I am.

Q. You testified, Mrs. Coe #1, in the course of these proceedings that at some time Mr. Coe indicated an intention that he would marry Mrs. Coe #2, is that right? A. He has told me that.

Q. And in the course of these proceedings you have testified that Mrs. Coe #2 told you that she intended to marry Mr. Coe, is that right?

A. Well in substance, yes.

Q. In substance? A. Yes.

Q. Then it is fair to say, is it not, that you realize that by obtaining a divorce you were making it possible for Mr. Coe to marry Mrs. Coe #2?

A. I don't realize it.

MR. McKEON: I object. Wait a minute. I suggest that is a matter which has been ruled on by the full Court.

THE COURT: Well, still she introduced that in evidence; she introduced that conversation in evidence, in other words. Now I think that he is entitled to that question because it might affect any possible weight that her previous testimony would have.

MR. McKEON: I have no objection on that ground, if it is confined to that ground I have no objection.

THE COURT: Well, I think it is admissible on that ground in any event.

Q. Do you recall the question? A. Would you repeat it, please?

(Stenographer reads aloud question)

WITNESS: I never thought of it.

Q. Well, you knew, did you not, that by obtaining a divorce Mr. Coe would be free to remarry?

MR. McKEON: I object.

THE COURT: Well, I think he may have it if he puts into his question obtaining a lawful divorce. Well, I suppose obtaining a divorce means a lawful divorce in any event. I think he may have it.

Q. The Judge says you may answer. A. No, my answer is no.

Q. You didn't think Mr. Coe could remarry?

A. I didn't think about it, no.

Q. You didn't think about it at all? A. No, not at all.

Q. Well, directing your attention to September 19th of 1942, didn't you realize at that time that the result of the divorce you obtained enabled Mr. Coe to remarry?

A. I didn't think about it at all, Mr. Perman.

Q. You haven't thought about it, and you didn't think about it on September 19, 1942? A. No, I didn't.

Q. And you haven't thought about it since?

A. Well, I don't understand that exactly. Just what do you mean by thought about it?

Q. When did you learn that Mr. Coe had married Mrs. Coe #2?

A. September 21st, 1942.

Q. Two days after the divorce was granted you, that right?

A. That's right.

Q. And you were told that by whom? A. Mr. Edwards.

Q. Didn't it occur to you then that as a result of the divorce you obtained in Nevada you made it possible for Mr. Coe to marry Mrs. Coe #2?

MR. McKEON: I object.

THE COURT: Well, you have asked the same question or substantially the same question twice, and she has answered "I didn't think about it." "I didn't think about it at all."

MR. McKEON: May it please the Court: May I say just a word. Under Section 32 in which this petition was brought, I suggest there is no materiality in this question relative to the issues. As to the validity of the divorce or validity of the contract it has no materiality. It may be limited to . . . have some part in this trial.

THE COURT: Well, of course he may have it on that ground and he may have it also as bearing upon her testimony with reference to the statement that she says Mrs. Coe #2 made about her intention of marrying Mr. Coe.

MR. McKEON: I quite agree to it on that, and I am asking it be limited to that.

THE COURT: Well, so far as I can see, that is the only effect it would have.

MR. FUSARO: He has already had it, I submit, Your Honor.

THE COURT: Yes, he has already had it. He has had it three times, because I have her answer three times. Once I wrote it out; I wrote it out a second time; the third time I put ditto marks.

MR. PERMAN: This question, if Your Honor please, relates to a specific time and refers to a specific incident.

THE COURT: I think they all do. I mean it all relates to the same matter. In other words, didn't she realize when she went out there in Nevada and went through a form of divorce, that she was placing Mr. Coe in a position where he could do just exactly the thing that she was complaining about, marry Mrs. Coe #2. All three questions, this one being the fourth, mean one and the same thing to me.

MR. PERMAN: All right, I will withdraw the question.

THE COURT: And she says she never thought about it.

Q. Now you have testified, Mrs. Coe #1, that after the hearing on September 19, 1942, you discussed the matter of counsel fees with Mr. Edwards? A. I did.

Q. And you asked him at that time what his charges were for what he had done for you? A. I did.

Q. Is that right? A. That is right.

Q. And that it was as a result of that conversation that you learned he had received the sum of \$1000 for counsel fees?

A. Why, I didn't know how much he received, no.

Q. Well, he told you his counsel fees had been paid?

A. Had been taken care of, that's right.

THE COURT: I didn't hear that.

WITNESS: Had been taken care of, is the way he expressed it.

Q. Is it fair to say, then, that after the divorce you obtained on September 19, 1942, you were prepared to pay Mr. Edwards, his fees out of the \$1500 that you had with you at that time?

A. I was prepared to pay him, yes.

Q. And I think you testified that you were surprised to learn that his counsel fees had been taken care of? A. Very much surprised.

Q. Directing your attention to the proceedings before Judge Wahlstrom in March of 1942, you learned that subsequent to those proceedings Mr. Fusaro and Mr. McKeon had been paid the sum of \$800 by Mr. Coe, did you not?

MR. FUSARO: By order of the Court, you put in.

MR. PERMAN: Now wait.

MR. FUSARO: If Your Honor please, that was an order of the Court, and may I have that inserted in that question?

THE COURT: Yes, you may.

MR. FUSARO: It is a matter of record.

Q. The Judge says you may answer. **A.** Yes.

Q. And you retained Mr. Fusaro and Mr. McKeon subsequent to the payment of that \$800 counsel fees, haven't you?

MR. McKEON: I object.

THE COURT: I don't see what difference it makes. Of course she has retained them, or of course they wouldn't be here.

MR. PERMAN: I would like to have it in the record. It is preliminary to other evidence.

THE COURT: Well, for whatever it is worth you may have it.

WITNESS: Yes.

Q. And it is true, is it not, that you approved what they had done and the advice they had given you?

MR. McKEON: I object.

THE COURT: She is bound by it in any event, everything they have done here.

MR. PERMAN: May I have it in the record, her testimony with reference to that?

MR. McKEON: Of course he cannot have such a wide scope, because there may be many contentions I make that she doesn't even understand.

THE COURT: She is bound by it.

MR. McKEON: No question she is bound by it, but he can't have that question.

THE COURT: I don't see that it is material. She is bound by it in any event; she is bound by everything they have done here. She has already admitted they are representing her. Of course I would so construe in any event. She is here in Court, and has been here every day, and she has seen them representing her, and there are written appearances in the case.

MR. PERMAN: I wasn't referring to this proceeding before Your Honor entirely. I will withdraw that question.

Q. Were you present in Court at the time of the arguments made by Mr. McKeon before Judge Wahlstrom on October 15, 1943?

A. Will you please repeat that date?

STENOGRAPHER: October 15, 1943.

WITNESS: I don't believe so.

Q. You recall the proceedings which were had as a result of which these cases went up to the Supreme Judicial Court?

MR. MCKEON: May it please the Court: Unless Mr. Perman's memory is failing, he knows she wasn't there at any part of that hearing.

THE COURT: I don't see what difference it would make in any event. She is bound by everything you did.

MR. PERMAN: Your Honor so rules?

THE COURT: Yes, certainly.

MR. PERMAN: I will withdraw the question then.

Q. Have you ever repaid to Mr. Coe the \$7500 that you received on September 19th, 1942?

MR. MCKEON: I object.

THE COURT: Well, I think he asked that before and I ruled that he might have it, and I think it is in the record that she didn't. I think he has asked the same question.

MR. MCKEON: We don't dispute the fact that she did not.

MR. PERMAN: Do you admit there was never an offer made for the repayment of that \$7500?

MR. MCKEON: If it were material I would; but it is not material in this petition, and it is not material in your pleadings.

THE COURT: My recollection is it is already in; it has already been answered; that that is the same question and I permitted it, and it is in.

MR. PERMAN: Your Honor rules that there was never a tender nor a repayment of the \$7500 she received in Nevada since the 19th day of September 1942?

THE COURT: That is my recollection.

MR. PERMAN: Well, may it be so made a part of the record, that that is or would be her testimony, in the event the question was not asked of her?

THE COURT: Well, I wouldn't like to go over the questions asked her and have it asked over again, just because there might be some question as to whether it had been asked or not.

MR. MCKEON: May it please the Court, in order that Mr. Perman may not be duly worried over a perfectly obvious fact, we don't claim we repaid the \$7500 or tendered the \$7500 because our understanding is as a matter of law we have no obligation to do so.

MR. PERMAN: That is entirely satisfactory, if Your Honor please. That is all.

Q. BY MR. FUSARO: Mrs. Coe, do you recall that last Friday Mr. Perman read to you part of a statement made in open Court by Judge Wahlstrom immediately after the arguments? A. I do.

Q. Now did Mr. Perman read the entire statement made by Judge Wahlstrom at that time? A. He did not.

Q. Have you recollection of additional statements that Judge Wahlstrom gave in open Court immediately after the termination of the arguments? A. I have.

Q. What are they?

MR. PERMAN: Objection.

THE COURT: He may have that question. MR. PERMAN: Exception.

WITNESS: He said that Mr. Coe's testimony and Miss Allen's that their relationship was just purely a business one was nonsensical.

Q. That is, you say that Judge Wahlstrom said at that time that the claims of Mr. Coe and Miss Allen that their business relations, that their relations were purely business relations was nonsensical?

A. That's right.

Q. What further statement did Judge Wahlstrom make at that time?

MR. PERMAN: Objection.

Q. I interrupted, you had not finished had you? A. No, I had not.

Q. Go ahead.

A. He said if Miss Allen had not come into the picture that Mr. Coe and I would still be living together as man and wife.

Q. Mrs. Coe, have you been—

THE COURT: As I understand, I would not have admitted the question at all if you had not asked her so many questions predicated upon what was said and asked her if she had it in mind.

MR. PERMAN: I was referring to matters of record, if Your Honor please, which are in the record. I had the record and I was reading from the record, and I asked her to—

MR. FUSARO: You only gave her part, and part was not on the record.

MR. PERMAN: I ask her to indicate in the record where that statement made by Mrs. Coe #1 appears.

MR. FUSARO: What she has stated is true, and you know it. It was in open Court.

Q. Mrs. Coe, have you been present here in Court from the moment that proceedings started up to the present time?

A. Well, the first day I wasn't here during the morning; but I came in at noon, and I have been here every day since.

THE COURT: May I interrupt to say this: That I do not permit that evidence as proof of any fact; but Mr. Perman asked the witness many questions and predicated those questions upon did she have in mind certain statements of Judge Wahlstrom.

MR. FUSARO: That is right, Your Honor.

THE COURT: And I permitted the question to show ~~that~~ she might have had other statements of Judge Wahlstrom in mind ~~in~~ addition to the statements Mr. Perman referred to. But not as proof of any fact.

MR. MCKEON: May it please the court, may I intrude here a minute. I desire to offer as a fact in a chain of fraud that began there and ends here.

THE COURT: Well, I cannot permit that at all.

MR. MCKEON: Well, save my exception.

MR. PERMAN: May I be heard for one moment, please?

MR. FUSARO: Well, His Honor has ruled.

MR. PERMAN: I would merely like to clarify something that Your Honor has said. In my examination of Mrs. Coe #1 I had referred substantially to findings of fact that were made by Judge Wahlstrom and were titled Report of Material Facts, which of course I shall offer later in the course of these proceedings.

THE COURT: As you asked the questions I did not accept them as facts.

MR. PERMAN: I thought Your Honor possibly might have misunderstood precisely what I was reading from. But substantially they were report of material facts, and before this cause is over I shall offer them and make them a part of this record.

MR. FUSARO: You know, Mr. Perman, you read from a statement that was not part of the material fact.

THE COURT: I did not accept them as facts; I did not accept the testimony as proof of any facts. Each time, as I remember it, he said to the witness: Having in mind Judge Wahlstrom stated so-and-so did you say so-and-so. In other words, did she have it in mind.

MR. FUSARO: That is right, Your Honor.

THE COURT: And I accepted the evidence only as such and not as proof of any fact; and I do not accept this testimony now as proof of any fact, but merely as evidence of other things that she might have in mind when she did certain things. Not as proof of any fact at all; either the previous questions or these last questions.

MR. FUSARO: Yes, Your Honor.

Q. Now Mrs. Coe, since noon of February 5, 1945, you have been in Court every day that there was a hearing, that right? **A.** I have.

Q. And were you in Court while Mr. Coe testified? **A.** I was.

Q. From noon of that day up until his testimony ended?

A. That's right.

Q. And during the time that you were in Court where did you seat yourself? **A.** On the first bench, right near the window.

Q. And what did you observe, Mrs. Coe, with respect to Mr. Coe and Mrs. Coe #2 during the times that I asked Mr. Coe questions?

MR. PERMAN: Objection.

THE COURT: He may have it. **MR. PERMAN:** Exception.

WITNESS: I noticed he would turn to Mrs. Coe #2 and watch her, and I turned around to see what was going on. At one time I saw her shaking her head for "No." Then I waited, and Mr. Coe would answer "No." I had seen her mouth the word "Yes."

Q. Just show the Court the exact motions that you saw Mrs. Coe #2 going through when questions were asked Mr. Coe.

A. (Demonstrating) A nod when she would say "Yes."

THE COURT: First she nodded what we ordinarily understand as a nod of "No," and forming her lips as if speaking the word "No," but making no sound?

WITNESS: That is correct.

MR. PERMAN: This is all subject to the respondent's exception.

THE COURT: You may have it if you wish.

MR. FUSARO: May I also have for the record, Your Honor, the motions that the witness indicated with reference to mouthing "Yes"?

THE COURT: It is in there.

MR. FUSARO: All of it?

THE COURT: Yes. (Stenographer reads same)

MR. FUSARO: And I wanted her motions with respect to "Yes" too.

THE COURT: I think both are in there.

MR. FUSARO: Very well.

THE COURT: I think both are in there.

MR. FUSARO: Very well, Your Honor.

Q. When I asked Mr. Coe questions you say you observed him look towards Mrs. Coe #2 before answering, that right? A. That is right.

Q. And did he look elsewhere? A. He looked towards Mr. Perman.

Q. In addition to these motions that you have already described, did you observe what answers were made by Mr. Coe when you observed Mrs. Coe #2 motioning, indicating "Yes" or "No"?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Mr. Coe would answer "Yes" when she nodded a "Yes," and when she shook her head for a "No" and mouth the word "No," why he answered "No."

Q. And you know, do you, that Mr. Coe is an expert lip reader?

A. I do.

Q. How do you know that? A. Well, I had experience.

Q. Now in addition to those motions that you have already described, did you observe Mrs. Coe #2 do anything else?

A. Well, she was doing something—

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: Well, she was doing something with her hands.

Q. Describe as best you possibly can what you observed Mrs. Coe #2 doing with her hands.

A. Well, she was placing one finger over the back of the other hand at one time, and sometimes she would raise two fingers up and place them over the back.

MR. MASON: The witness is holding both hands together with the index finger of one hand over the back of the other hand.

Q. And then other times you saw two fingers? A. Yes. (Indicates)

MR. MASON: The other gesture she just indicated was with the hands together, the index and middle finger of one hand over the back of the other hand.

WITNESS: That's right.

THE COURT: Index and little finger?

MR. MASON: Index and middle finger.

THE COURT: You said index and little finger.

MR. MASON: I didn't intend that; the middle finger.

Q. Will you tell us where she had her hands placed when you observed those motions?

A. Right on the back of the bench when I noticed them.

Q. So we may have it definitely stated for the record, where was Mrs. Coe #2 seated? A. Just about the position she is in now.

Q. Back in the rear bench against the rear wall of this Court Room?

A. That is correct.

Q. And her hands were placed over which bench?

A. The bench in front of her.

Q. That would be the back of the bench directly in front of her, is that right? A. That's right.

Q. There are two rows of benches in this room for witnesses, is that right? A. That is correct.

Q. And do you know how many times you had seen her do that?

A. Well, I observed her about three or four times.

Q. I see. That is, you watched her intently, did you? A. Yes, I did.

Q. And do you know what those motions indicated?

MR. PERMAN: Objection.

WITNESS: No, I don't.

Q. Do you know whether or not Mr. Coe understands the sign language? A. I don't know that.

Q. You don't know? A. No.

Q. Do you know what responses were made by Mr. Coe when Mrs. Coe #2 motioned with her fingers on the back of the other hand?

MR. PERMAN: Objection.

THE COURT: If she knows she may answer.

WITNESS: No, I don't know whether it would be "Yes" for one and "No" for two; I couldn't say as to that.

Q. You don't know? A. No.

Q. Did Mr. McKeon make some inquiry from you with respect to whether or not Mr. Coe understood the sign language?

A. Yes, he asked me.

Q. And the information you gave him was the same as you have given here in Court? A. That's right.

MR. FUSARO: You may inquire.

MR. PERMAN: No further questions.

MR. FUSARO: That is all, Mrs. Coe.

(RECESS. HEARING RESUMED)

MRS. HARRIET MOFFITT testified as follows:—

THE COURT: Have you been sworn? A. Yes, I have, Your Honor.

Q. BY MR. FUSARO: What is your name? A. Mrs. Harriet Moffitt.

Q. And you live where? A. You mean at present?

Q. Yes. A. 3 Midland Street in Worcester.

Q. You live with your sister? A. That's right.

Q. Mrs. Coe #1? A. Yes.

THE COURT: 3 Midland Street.

WITNESS: Yes.

THE COURT: How do you spell your last name?

WITNESS: M-o-f-f-i-t-t.

Q. As I understand it, your husband is in the service, that right?

A. That's right.

Q. Now were you present during the proceedings in March 1942?

A. Yes, I was.

Q. At that time where were you living?

A. I was living in Cambridge, Massachusetts.

Q. With your husband, that right? A. With my husband.

Q. And were you present during the entire proceedings in March 1942?

A. Yes, I believe I was present at most of it anyway, if not all of it.

Q. And did you come up especially to attend those proceedings?

A. I did.

Q. And how long did you remain here in March 1942? When the proceedings commenced I think it was the 16th, yes, they commenced on March 16, 1942. A. I stayed until March the 25th I think it was.

Q. The date that the proceedings terminated? A. That's right.

Q. And during the time the proceedings were in progress in March of 1942 where did you stay?

A. I stayed with my sister at 32 Howland Terrace.

Q. On March 25, 1942 did you leave Worcester?

A. I stayed here, I think that was during the week, I stayed until the week-end, and then I returned to Cambridge.

Q. And did you return after that?

A. Yes, I did. I came back to Worcester the following week.

Q. When the following week did you return to Worcester?

A. I came back on Monday morning.

Q. And you remained here then how long?

A. I remained here until Friday night or Saturday morning. I know it was during the week; I didn't go back until the week-end—I just returned week-ends.

Q. And you came to Worcester for what purpose?

A. My sister required attention, she was quite ill after the trial and I found it very necessary to come up and take care of her.

Q. And you remained with your sister until when?

A. I came up to Worcester at least four or five weeks following the trial, until she had finally regained her health and I thought she was able to take care of herself.

Q. I see. I want to show you a 1942 calendar. You stated that trial terminated on March 25th, and you returned what date according to the calendar?

A. Then I returned the 28th, March the 27th. It may have been the evening of the 27th. I know it was over the week-end that I returned to Cambridge.

Q. And you remained with your sister until when?

A. Then I came back to Worcester about the 30th of March and I stayed here until either the 3rd or 4th of April and returned to Cambridge again. I was here all during the week, because my husband would join me evenings, coming up during the week, and then I would return during the week-end.

Q. You remained here until when?

A. Oh, I did that at least, I can't be too sure, but I know I came here for four or five weeks, until she regained her health in May. It may have been the month of April.

Q. But for the month of April you were here?

A. I was here, except week-ends.

Q. That is, Friday or Saturday you would leave for Cambridge, and then come back the following Monday, is that right?

A. That's right.

Q. I would like to have you look at that and I call your attention to April 14th. That was what day of the week? A. That was a Tuesday.

Q. And you were in Worcester at 32 Howland Street on that day?

A. I was in Worcester on Tuesday.

Q. During any of the time from March 25, 1942 up until the first week in May 1942 had your sister, Mrs. Coe #1, left for New York?

A. No, she was in Worcester, and unable to.

Q. And April 14th, 1942 where was your sister, Mrs. Coe #1?

A. She was at 32 Howland Terrace.

Q. In Worcester? A. In Worcester.

THE COURT: That is Howland?

WITNESS: That is right.

MR. FUSARO: You may inquire.

MR. PERMAN: No questions.

MR. FUSARO: Now if Your Honor please, I desire to use Miss Quinn as a witness, and I don't know just how Miss Quinn is going to take everything down. I want to use her as a witness.

THE COURT: Well, I think it could be done.

MR. FUSARO: Well, I suppose, Your Honor, I could ask her a question and she could record it, then give the answer and record it. It might take a little time.

MR. MASON: Maybe it is something we could stipulate on.

MR. PERMAN: If it is a matter of record.

MR. FUSARO: I would rather bring it out through Miss Quinn. I think we could get along much quicker.

THE COURT: Well, I think she may write down what you ask her and then she can write down her answer, and for that purpose she may remain seated.

LAURA G. QUINN, sworn by Court, testified as follows:—

Q. BY MR. FUSARO: What is your name? A. Laura G. Quinn.

Q. And what is your address? A. My business address?

Q. Yes. A. 729 State Mutual Building, Worcester, Massachusetts.

Q. And what is your occupation?

A. I am a Court Reporting stenographer and also do public stenographic work at 729 State Mutual Building.

Q. Now in March 1942 were you the Court Stenographer duly appointed to take the testimony of all witnesses who testified in the case of Katharine C. Coe vs. Martin Van Buren Co, being numbered on the docket of this Court as #131205? A. Yes, I was.

Q. And have you the notes that you took during the hearing?

A. Yes, I have here my shorthand books.

Q. Now I would like to ask you, Miss Quinn, did I ask Mr. Coe on March 16th, 1942, the following questions: "Now how many homes do you maintain?" A. Yes.

Q. "Answer: I maintain one." A. Yes.

Q. "Question: Where is that." A. Yes.

Q. "Answer: 6 Boynton Street and an apartment in New York City." A. Yes.

Q. "Question: Did you maintain an apartment in New York since October of 1940 because of your hearing?" A. That is right.

Q. "Answer: Yes." A. Yes.

Q. "Question: I see; and not because of anything else?"

A. That is right.

Q. "Answer: No. I wanted to get my hearing back."

A. That is right.

Q. "Question: Have you been treated ever since?"

A. That is right.

Q. "Answer: Ever since, every day?" A. That is right.

Q. "Question: Right up to the present time." A. That is right.

Q. "Answer: Right up to the present time." A. That is right.

Q. "Question: Well, you got the treatment in New York the latter part of 1940, didn't you?" A. That is right.

Q. "Answer: October." A. That is right.

Q. "Question: Yes. That's about the time Dawn Allen starts to come to New York?" A. That is right.

Q. "Answer: About that time, or after." A. That is right.

MR. FUSARO: May I have a moment, Your Honor?

THE COURT: Yes. (Mr. Fusaro looks over his papers)

Q. Now Miss Quinn, I direct your attention to the testimony of Dawn E. Allen; according to the record she testified on March 23rd, March 24th is that right? A. That is right.

MR. MASON: 1942, that right?

MR. FUSARO: Oh yes, 1942.

Q. Was this question asked Mrs. Coe #2: "What did Mrs. Coe say and what did you say to Mrs. Coe, and that is all I am asking you about now." A. That is right.

Q. "Answer: All right. It was after her sister left. Mrs. Coe asked me what my relationship was with Van. She says, 'What is your relationship with Van?' I said, 'Simply a business relationship, Mrs. Coe.' She said, 'I didn't know that Mr. Coe required a secretary.' I said, 'There is quite a bit of work to be done.' Then she walked towards the door. Yes, Mrs. Coe did say, 'Are you having an affair with Van?' I says, 'Certainly not.' And I think that Mrs. Coe did exchange a few words with mother."

A. That is right.

MR. MASON: I would like to object at this stage only for the purpose of ascertaining the purpose of the introduction of this prior testimony of Mrs. Coe #2?

MR. FUSARO: To contradict what Mrs. Coe #2 stated on the stand.

MR. MASON: I will withdraw any objection, if that is the purpose.

Q. "Question: Now will you tell us what you say what conversation took place from the time you first saw Mr. Coe that night."

A. That is right.

Q. And according to the record it refers to October 1941, is that right Miss Quinn? A. Yes, that is right.

"Answer," in part: "She," referring to Mrs. Coe #1, "said, 'A vulture,' that I was running true to form. She accused me of being promiscuous; she accused me of adultery." A. That is right.

Q. And is that in reply to a question put by Mr. Perman in direct examination, Miss Quinn? A. That is right.

MR. PERMAN: What is the page number on that?

MR. FUSARO: That is Page 17.

Q. Now I call your attention to Page 62 of the record, referring to October 19th, 1941, "Question: What do you say Mrs. Coe said to you then? Answer: Do you want me to over that conversation again?"

A. That is right.

Q. And in part, Mrs. Coe #2 said, "I—

MR. MASON: Just a moment. Did you say "in part"?

MR. FUSARO: Yes.

MR. PERMAN: Did she say "in part" or are you reading in part?

MR. FUSARO: She said in part. It is a long answer and I am only calling the Court's attention to those parts of her answer that directly contradicts. It is a long answer that take a page and a half.

MR. MASON: Well, if we might look at the answer now.

(Messrs. Mason and Perman look at same)

MR. FUSARO: All I wanted in there is her own statement that she accused her, Mrs. Coe #1 accused her of adultery, and that's all. She denies that that was so.

Q. "Answer: All right. She stood in the doorway and looked at me, walked over towards me where I was sitting and asked me if I knew what I reminded her of. I looked up at her, and she said 'A vulture.' She said, 'You are running true to form.' Then she walked back. She stood in the doorway, and at the time she accused me of being promiscuous, she accused Mr. Coe of adultery."

MR. MASON: That is Mr. Coe.

MR. FUSARO: I have read it exactly as she stated it up to that point.

Q. Was this question asked by Mr. Perman of Mrs. Coe #2 in direct examination: "Did you at any time have any designs on Mr. Coe?"

A. Yes.

Q. And "Answer: Never." **A.** That is right.

Q. "In the course of any of your meeting with Mrs. Coe or talks with her, did you ever tell her that you loved Van and that you proposed to take him away from her?" **A.** That is right.

Q. "Answer: I did not." **A.** That is right.

MR. MASON: Now, if Your Honor please, I submit that the last two question and answers were introduced for the same purpose, namely, to contradict Mrs. Coe #2?

MR. FUSARO: Yes

THE COURT: I think that is the only purpose.

MR. MASON: My contention is there is no contradiction whatsoever.

MR. FUSARO: She never admitted it; she denied it quite strongly.

MR. MASON: I think she testified exactly that way in this case. But to save time, I will withdraw the objection.

THE COURT: All right.

Q. Was this question asked Mrs. Coe #2:

MR. PERMAN: Will you refer to the page number?

MR. FUSARO: Page 65.

Q. Was this question asked Mrs. Coe #2 in cross examination: "And do you deny, Miss Allen, that you were on a trip with Mr. Coe in Trenton, New Jersey, and Philadelphia and Babylon? Answer: No."

A. That is right.

Q. Was this question asked Mrs. Coe #2, referring to the incident that occurred on October 19th, 1941, at the home of Mr. and Mrs. Coe at 6 Boynton Street, Worcester:

MR. PERMAN: Page?

MR. FUSARO: Page 60.

Q. Was this question asked Mrs. Coe #2 in cross examination: "Were you ever upstairs?" A. That is right.

Q. "Answer: I have been, yes." A. That is right.

Q. On Page 59, in the cross examination of Mrs. Coe #2 were these questions asked: "Well, after you found out that you were the subject of these proceedings you continued your relationships with him?" Meaning Mr. Coe. A. That is right.

Q. "Answer: I saw Mr. Coe at Mr. Perman's office, if that is what you mean." A. That is right.

Q. "Question: Will you answer that question?" A. That is right.

Q. "Answer: Will you please explain what you mean by relationship?" A. That is right.

Q. "Question: Whatever they were, you continued them?"

A. That is right.

Q. "Answer: I did not." A. That is right.

Q. "Question: Did you stop them? A. That is right.

Q. "Answer: The business relationships, yes." A. That is right.

Q. And further down the Court asks the question "When?"

A. That is right.

Q. "Answer: When Mr. Perman called me and told me that Mrs. Coe was considering naming me as correspondent in this case."

A. That is right.

MR. FUSARO: Now here is the record, Mr. Perman. You don't have to read my notes (referring to pencilled notations).

MR. MASON: May we have an opportunity for a moment to look at this, Your Honor?

THE COURT: Yes.

Q. BY MR. PERMAN: Miss Quinn, I show you the record, Page 61, to which you have already testified, the answer continuing on at Page 62 and 63. Is it true that, referring to the incident of October 19th, 1941, the testimony of Mrs. Coe #2 in its entirety reads as follows: "All right. She stood in the doorway and looked at me, walked over towards me where I was sitting and asked me if I knew what I reminded her of. I look up at her and she said, 'A vulture.' She said, 'You are running true to form.' Then she walked back, she stood in the doorway, and at the time she accused me of being promiscuous, she accused Mr. Coe of adultery, and turned to the cab driver and instructed him to go into the dining room where the furniture was packed and pick up the andirons. I think she then walked out of the house with him and gave him some instructions—I can't testify to those because I didn't hear them. She returned into the house again, walked to the phone, dialed a number and said, 'I am sending some things up by a driver. I am at #6.' She walked back in to me and asked me what my game was. I said I had none. She asked me if I expected to marry Mr. Coe. I told her no. She said, 'Well, he doesn't intend to marry you.' I said, 'I know that.' She walked over to Mr. Coe—no, at that point she went upstairs. She came down, and on the way down she said, 'Van, where is my bedroom furniture?' Then she walked over to Mr. Coe and made some statements, and when Mr. Coe said 'Don't talk like that; you don't realize what you are saying,' she said, 'What is it? You or your money?' That's what made him say the other. She said, 'You are quite a prize, aren't you. But you won't be when I get through with you. I intend to take every cent of your money and your houses.' And then turning to me she said, 'And Miss Allen, as for you, I am going to plaster you and your family all over the front page, and when I get through with you Van will have to marry you.' I said I refused to be insulted further. I told Mr. Coe that I would call a cab, and he says, 'No, I will drive you home. I brought you over.' I said, 'It isn't necessary. I can call a cab and you can continue your conversation with Mrs. Coe.' He says, 'No, I will drive you home.' I started to go out the doorway. The car was parked over in the driveway of the garage, and Mrs. Coe says, 'You are very clever, aren't you.' I turned around and said, 'I beg your pardon?' And she repeated it. I simply walked out of the door. I went over and sat in the car. Mr. Coe came out shortly and he drove me back to my home." Now is that the complete answer? A. Yes, that is.

Q. BY MR. MASON: Miss Quinn, Mr. Fusaro directed your attention to certain questions put to Mr. Coe in examining him on March 16th, 1942, with reference to Mr. Coe's residences at the time. Was the following question asked of Mr. Coe at that time: "Now the apartment in New York City consists of what? Answer: I lease it by the year."

A. That is right.

Q. Then question by the Court: "How many rooms? Answer: Three rooms." A. That is right.

Q. "Question: And how much do you pay as rental? Answer: Rental, \$100 a month." A. That is right.

"Question: And you have had that apartment in New York how long? Answer: Had it since October '40." A. That is right.

Q. "Question: Prior to that time did you have any apartment in New York? Answer: No." A. That is right.

Q. "Question: How much time do you spend in this apartment in New York? Answer: Well, from the time I was through with the Doctor." A. That is right.

Q. "Question: How much time do you spend in this apartment in New York? Answer: Oh, I would come home for the week-end and come back to New York for the next two or three weeks." A. That is right.

Q. "Question: You spent how many days every two weeks in this apartment in New York? Answer: Every day." A. That is right.

Q. "Question: Every day? Well, then, how much time do you spend at 6 Boynton Street? Answer: Just a week-end occasionally."

A. That is right.

Q. Question by the Court: "I understand you are only spending the week-ends at 6 Boynton Street now?" "Answer: Yes." A. That is right.

Q. "Question: That has been the situation since 1940 right up to the present time? Answer: Yes." A. That is right.

Q. "Question: You also maintain another home, don't you? Answer: Not exactly a home. I maintain an office in the house on the corner."

A. That's right.

Q. "Question: And that is that number? Answer: #2."

A. That is right.

Q. "Question: #2 Boynton Street? Answer: That's right."

A. That is right.

Q. BY MR. PERMAN: Miss Quinn, I direct your attention to Page 66 of the record, where there is reference to the trips to Trenton and Philadelphia. Was this question asked: "When you went to Trenton and Philadelphia, what was the purpose of that trip? Answer: Well, Dr. Josephson had been talking over a battery with Mr. Coe and they needed a radio active and radio inactive for that. There was a chemist whom Dr. Josephson knew. He said that in Philadelphia, at a chemical—at a place where they buy all sorts of chemicals he could purchase the radio active he needed" Does that question and answer appear in the record, Miss Quinn?

THE COURT: By your question, Mr. Perman, it is not clear to me whether you are referring to testimony given by Mr. Coe or by Mrs. Coe #2, who was then Dawn Allen.

Q. Can you determine by this record, Miss Quinn, whether that was a question propounded to Mrs. Coe #2, and her answer?

A. Yes, that was a question propounded to Mr. Coe #2.

Q. Does the record indicate that this question was asked of Mrs. #2: "And you were never in Babylon? Answer: I don't know where Babylon is." **A.** That it right.

MR. PERMAN: That is all.

SHERIFF FRANCIS J. DEARY, sworn by Court, testified as follows:—

Q. BY MR. FUBARO: What is your name, sir? **A.** Francis J. Deary.

Q. And you reside where? **A.** Dudley, Massachusetts.

Q. And you are a Deputy Sheriff? **A.** I am.

Q. And you have been a Deputy Sheriff for how long?

A. Thirteen years.

Q. And have you been on service in the Probate Court? **A.** I have.

Q. You have been on service in the Probate Court how long, Officer?

A. Approximately three years.

Q. And have you been assigned to this Court since the proceeding started on February 5th, 1945? **A.** I have.

Q. And were you here during the time that Mr. Coe testified?

A. Only when my duties took me from the Court Room.

Q. You were except when your duties took you from the Court Room. Is that what you mean? **A.** Yes sir.

Q. Where were you seated during the course of these proceedings, Officer?

A. Well, I assume that is the west wall. My back was to the west wall.

Q. And you were seated between the steam pipes and the north window of this room, is that right? A. Correct.

Q. And about how far away from the first bench, or the nearest bench?

A. Within six feet.

Q. Now when these proceedings started on February 5th, 1945, while Mr. Coe was on the stand did you observe Mrs. Coe #2?

A. That was the first day of the trial?

Q. Yes, the first day, February 5, 1945.

A. I'm not certain, sir, on February 5th whether I made any observations, that is, of Mrs. Coe. That was the question you asked?

Q. Yes. Did you see Mrs. Coe on the next day? A. Certainly.

Q. And where was Mrs. Coe seated on the next day, that would be February 6th, 1945.

A. About the same approximate position she is sitting in at the present time.

Q. And that is on the rear bench, that right? A. That's right.

Q. And as you sat in your chair at the west wall between the steam pipe and the north window, did you have Mr. Coe #2 in your observation and view? A. Part of the time.

Q. All right. Did you observe Mrs. Coe #2 while Mr. Coe was on the stand testifying? A. Yes sir.

Q. What did you observe Mrs. Coe #2 doing while Mr. Coe was testifying? A. Various things.

Q. All right. Did you observe certain signs or signals made by Mrs. Coe #2?

MR. PERMAN: I pray Your Honor's judgment.

THE COURT: Well, that is leading. You may ask him what he observed and he can relate what he observed.

MR. FUSARO: Yes, Your Honor.

Q. You tell us what you observed Mrs. Coe doing, while Mr. Coe was on the stand.

A. I observed Mrs. Coe nodding her head forward and shaking her head sidewise. I warned Mrs. Coe in open Court on that.

MR. MASON: May that go out as not responsive?

MR. FUSARO: Well, I will bring it in.

THE COURT: Well, it is not responsive to the question. It might be admissible by another question.

Q. Of course I would like to have you tell us what you observed her doing, that is, Mrs. Coe #2.

A. I had noted the position of her hands, that is, various positions of her hands; that is, different positions. She was taking notes. That has happened on several occasions.

Q. What did you observe Mrs. Coe do with her hands and fingers?

A. Well—

Q. Just indicate with your own hands, if you will, Officer.

A. Well, there was times when her hands went in position, well, I would say in front of her bosom. (Witness demonstrates)

MR. PERMAN: Hold that position.

MR. MASON: May it appear in the record—

MR. PERMAN: Will you hold your hands up so we can describe them for the record?

MR. MASON: It may appear in the record that the witness is now holding his hands with his elbows folded and his right hand near his chest and the left—

THE COURT: Elbows bent, I would say.

MR. MASON: Elbows bent; with his right hand close to his chest and his left hand immediately over his right hand.

Q. And what did you observe her doing while she was in that position?

A. Well, there was several different changes of the hands; kind of routine changes of the hands, I would say.

Q. Tell us exactly all the positions you observed.

A. I'm not certain whether the right hand was on the inside and the left hand on the outside, but the hand that was on the inside would drop below the other hand, and other times it would drop back to position. The position of the fingers changed some.

Q. That is, the hands were being moved up and down, that right?

A. That is true.

Q. Tell us what you observed about the fingers, what she did about the fingers. A. Well, the fingers did change positions too.

Q. Tell us what you observed by indicating on your own hand what she did with her fingers.

A. Well, there was times when the hand that was under the fingers was drooping straight down—not exactly straight down, but very near vertical position.

MR. PERMAN: In that fashion you are holding your hands now?

MR. FUSARO: Don't interrupt. May I have the answer to the question before Mr. Perman interrupts?

MR. PERMAN: I think we ought to have the description in the record as these positions are taken.

MR. FUSARO: They will have all the description in the record, I assure you.

THE COURT: You may inquire, Mr. Fusaro.

Q. Go right ahead. You were indicating about the fingers, when there was interruption.

A. My memory of it, the fingers of the hand that were on the inside were nearer the body, and the fingers at times were nearly vertical position. then they were brought back to another angle, or brought back up in position about with the other hand. And there was other times when the fingers were up in position above the other hand.

Q. Did you observe what movements she made with respect to the fingers of either hand? A. That is not quite clear, Mr. Fusaro.

Q. How did she move her fingers? Just indicate how her fingers were moved. A. Well, I don't know as I can describe just—

Q. Well—

MR. MASON: Let him answer.

WITNESS: Any further than I have described the movement of the fingers, there was actually no movement of the fingers. The fingers were formed in a certain position and then the hands moved or the hand was moved with the fingers in a certain position. That's all I can describe it. I didn't see the fingers being moved at all.

Q. That is, the hand was moved in a certain position?

A. That is correct.

Q. I wonder if you can indicate on yourself just how the hand was moved. A. They were on the upper position. I think it was the right hand was moved down so that the fingers that were showing were either in or nearly in a vertical position and held there for a certain period of time, and be brought back.

(HEARING SUSPENDED UNTIL 2 P.M.)

P.M. SESSION

Q. Mr. Deary, before the noon recess you were telling us about some of the positions that you observed Mrs. Coe holding her hands and fingers, that right? A. That's right.

Q. Now I would like to have you tell us about other positions that you observed. A. Well, I believe I stated in answer to my first question that one position was high, it was nearly across the bosom, and another time the hands were down on the lap, or very near the lap in the lower position.

Q. And you told us about the fingers of one hand being extended above the fingers of the other hand and then turned downward at times, that right? A. That is correct.

Q. What other positions with respect to the movement of the fingers?

A. Well, I didn't observe any movement of the fingers. Any time I had an observation the fingers had already been placed.

Q. Show us how.

A. The hands would be in position where the fingers had already been placed in position, and they would be just held in position, whether low or high.

Q. That is, one hand below the fingers of the other hand, that right?

A. That's right.

Q. And during some of those occasions you saw all the fingers, or one or two fingers placed on the back of the fingers of the other hand.

MR. MASON: Just a moment. Can't we have a little more orderly questioning on direct examination, without leading questions, Your Honor?

THE COURT: I don't see anything disorderly about it; but that question might be somewhat leading.

MR. MASON: I really meant that wasn't orderly examination.

Q. What attracted your attention to Mrs. Coe #2?

A. In the first instance what attracted my attention was Mr. Coe's movement on the stand.

Q. What do you mean, his movement on the stand? A. His attorney would ask him questions and before he would answer he would glance inquiringly in the direction of the north wall of the room. That had been repeated a number of times; then I noticed from sitting in the other part of the room.

Q. That is, Mr. Coe turned inquiringly towards Mrs. Coe #2?

A. Correct.

THE COURT: Just a moment. Was that while his attorney was examining, or while Mr. Fusaro was examining?

WITNESS: While his own attorney was examining him.

Q. Did you see that same situation while I was examining him?

A. Yes sir, that continued.

Q. It continued?

A. Not all the time, but it continued for quite some time.

Q. I would like to refresh your recollection about Mr. Coe having been called to the stand by me first. Do you remember that? A. I do.

Q. I called him on the first day, which was February 5, 1945, at about ten minutes of one. A. Yes, shortly before dinnertime.

Q. And he was under examination that day and the next day also by me. You remember that? A. For quite some time the next day.

Q. You remember that? A. Yes.

Q. Yes. I think the examination went into Wednesday?

A. I'm not sure.

Q. You are not sure about that?

A. No sir. I made the statement it was questions Mr. Perman asked when I first noticed it.

Q. Yes.

A. I believe the first time I noticed was one of the objections, or there was some objection raised and Mr. Perman—

Q. Making objections? A. Making objections or talking with the Court, I'm not certain.

Q. And it was while that was happening you noticed that inquiring look from Mr. Coe to Mrs. Coe #2?

A. I would say now that would be correct.

Q. And when you had observed that a number of times, did you warn Mrs. Coe #2?

A. Well, I had seen the movement of her hands, and of course I didn't think too much of it at the time, that is, when I first noticed it; but then when I saw the movement of the head in conjunction with the movement of the hands I went to Mrs. Coe and told her that was not proper in the Court Room and not to continue, and she said she was sorry and would not continue to do it.

Q. Now after you had warned Mrs. Coe that it was improper for her to continue to make those signs, what did you observe Mrs. Coe #2 do?

A. Well, the hands, the movement of the hands I would say—I couldn't recognize if they were signals, I wouldn't say they were actually language, but it would seem, or impressed me as being some kind of signals, they were continued for some time thereafter.

MR. MASON: I ask that be stricken.

THE COURT: Why?

MR. MASON: Conclusion of this witness.

THE COURT: What conclusion?

MR. MASON: "Impressed me as being signals."

THE COURT: It may stand. That is merely stating what he observed and how he observed it.

MR. MASON: Your Honor will save my exception for refusal to strike out any conclusion or inference of this witness. He is not qualified as an expert.

THE COURT: He didn't attempt to give an expert opinion.

MR. MASON: I think when he attempts to incorporate, interpret something that is apparently sign language he is attempting to give an opinion which he is not qualified to give.

THE COURT: He merely gave the opinion that it was a sign. Any person may state an opinion, if the opinion is within their knowledge. A layman may give his opinion by knowledge or information that a layman might be expected to have.

MR. MASON: Yes, I think that is true with reference to usual observations, such as people who are under the influence of liquor. But here we have a specialized kind of a situation where this witness I think is not in any way qualified.

THE COURT: He doesn't attempt to give a specialized opinion concerning it.

MR. MASON: Well, Your Honor will save my rights.

Q. Did you warn Mrs. Coe #2 thereafter?

A. No. I believe only one warning.

Q. One warning? **A.** Yes, that is right.

Q. How long was it that you had been observing Mrs. Coe #2 and Mr. Coe before you warned Mrs. Coe #2 that it was improper for her to make those signs?

A. My recollection is my warning to Mrs. Coe was along the middle of the afternoon.

Q. It would be the middle of the afternoon of the first day, February 5th, assuming that that is the day we started?

A. I think that is incorrect; it was not the first day of the trial that I spoke to Mrs. Coe.

Q. When was it?

A. I'm not certain, but I think it was the second day; that is my memory of it.

Q. That would be February 6th, 1945? A. That is my memory of it.

Q. Well, all right, if that is your recollection. Now after you had warned Mrs. Coe #2, you say she continued to make the same signs?

A. That is correct. I wouldn't say that; I would want to qualify that. I wouldn't say the same signs, I would say various signs.

Q. Various signs? A. That's right.

Q. You recall that before you testified or took the stand here today I talked with you about your observations, that right?

A. You asked me if I had seen any signs, and I told you yes.

Q. I want to ask you, in order that your recollection might be refreshed, if—

MR. MCKEON: Excuse me. When?

Q. Well, do you recall when I talked with you first? A. I do not recall.

Q. It was some time ago? A. I think it was two weeks ago.

Q. Yes, during the first week, that right?

A. I think that is correct; I'm not sure.

Q. And in order that your recollection might be refreshed, do you recall the use of the finger of one hand over the back of the fingers of the other hand, and at times the use of two fingers of one hand over the back of the fingers of the other hand by Mrs. Coe #2?

MR. PERMAN: Objection.

THE COURT: You may have it.

MR. PERMAN: Exception.

WITNESS: Well, I know that there was various fingers used over and under both.

Q. Now that you recall that, do you recall further, during the course of the examination of Mr. Coe, that Mrs. Coe indicated by putting one finger over the fingers of the other hand, and at times two fingers over the fingers of the other hand?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

WITNESS: That is correct.

Q. Now when you saw that, did you recognize that as having occurred at times when Mr. Coe looked towards her after a question was asked?

A. Yes sir.

Q. And do you recall, Officer, what response the witness made, that is, Mr. Coe made when there was one finger over the fingers of one hand and when two fingers were placed over the fingers of the other hand?

MR. PERMAN: Objection.

WITNESS: No sir.

THE COURT: He may have it.

Q. You did not notice that? A. I didn't pay any attention to the questions and answers.

Q. And did you recognize those movements of the fingers as a sign of some kind?

MR. PERMAN: Objection.

THE COURT: He may have it. MR. PERMAN: Exception.

Q. Did you? A. Yes sir.

MR. FUSARO: You may inquire.

Q. BY MR. MASON: Mr. Deary, you were seated at the—what did you call it? The west wall of this room? A. With my back to the west.

Q. About how long is this room?

A. I should say it is about—you mean in depth?

Q. The length of the room. A. About eighteen.

Q. Eighteen or twenty feet? A. I would say about eighteen.

Q. And how wide? A. About fourteen or fifteen feet.

Q. A rather small room? A. Yes.

Q. And Mrs. Coe #2 was seated in the rear of the room, that right?

A. Yes sir.

Q. Almost opposite the Judge? A. Well, very near in line, yes.

Q. And facing the Judge? A. Most of the time, to my recollection.

Q. She was in full view of everybody in the room?

A. Well, of course that I can't say.

Q. You had no difficulty observing her at all times? A. Only once.

Q. Well, you could see her in the room sitting there?

A. You asked me if I had any difficulty, and I said only once.

Q. You mean when somebody was sitting in front of her?

A. Yes, while Mr. Coe was testifying.

Q. And while Mr. Coe was testifying, people sat in front of her?

A. Number of times.

Q. People would come in and go out? A. That's right.

Q. And you observed Mr. Coe look towards his wife #2 frequently while on the stand? A. Yes, many times.

Q. There were discussions between counsel and Court?

A. Frequently.

Q. And when these discussions were going on you observed Mr. Coe look towards Mrs. Coe #2? A. That is right.

Q. And he was not testifying at that time? A. That's right.

Q. And you observed him looking towards his counsel?

A. Many times.

Q. Did you observe any signals from counsel? A. No sir.

Q. Did you see me with my hand on my head? A. Maybe.

Q. Did you see my hands folded in front of me while I was sitting at the counsel table? A. I couldn't observe that, sir.

Q. You said you saw Mrs. Coe taking notes in the Court Room?

A. That is correct, sir.

Q. She was present all during the trial of this case? A. That's right.

Q. Leaning forward and listening to all the testimony?

A. Changed her positions a number of times?

Q. She seemed to fidget a great deal? A. At one time, yes.

Q. She moved her hands almost constantly? A. No, I wouldn't say almost constantly, no.

Q. But you did see her moving her hands a great deal?

A. Quite a great deal.

Q. Did you ever observe her out in the corridor? A. Yes.

Q. See her moving her hands out in the corridor? A. Some.

Q. Wasn't she the kind of woman that was very active with her hands when she talked? A. According to who she was talking to.

Q. But you saw her moving her hands quite frequently?

A. Several occasions.

Q. Now you saw her with her hands folded on her lap on some occasions? A. Yes sir.

Q. Thought that was a sign, did you?

A. Not when folded on her lap, no sir.

Q. Well, that was one of the positions you have just indicated in your direct testimony. A. Not in my memory.

Q. Didn't you tell us she sometimes dropped her hands to her lap?

A. That's right.

Q. You saw her with her hands folded near her chest?

A. That's right.

Q. Was that one of the signs you thought she was making to her husband? A. Well, the position they were folded, yes.

Q. Well, the position they were in was with one hand with the fingers together, her right hand I think you indicated before, was closed to her chest and her other hand with the fingers together resting on the right hand?

A. I believe I made myself clear. I said that sometime one hand was closer, at other times the other hand was closer. That is, one hand was inside the palm of the other hand.

Q. That is, in other words you saw her with her right hand nearer her chest and her left hand over the right hand? A. That's right.

Q. And other occasions you saw her with her left hand near the chest and the right hand over it? A. Sometimes, yes.

Q. And you thought that was a sign? A. In my judgment, yes.

Q. Did you ever see her with her hands clasped together this way (indicating)? A. I did.

Q. With the fingers interlocked? A. Yes sir, and, I also saw—

Q. Just a moment. A. Yes, interlocked in different positions.

Q. If you will just answer one question at a time. A. All right.

Q. You saw her with her hands folded, interlocked, in front of her?

A. That is correct.

Q. You didn't mention that while testifying a little while ago?

A. I didn't.

Q. And you thought that was a sign?

A. Not when they were interlocked as you have them now.

Q. But when one hand was resting on the other hand, you thought that was a sign? A. In a certain position, yes.

Q. Have you got your hands now resting, one hand resting over the other hand? A. I have partly.

Q. Are you making any signs to anybody? A., Not that I know of.

Q. Someone called to your attention early in the trial, I think you testified it was Fusaro, the first or second day of the trial that there was some signalling going on, didn't he?

A. Had someone called it to my attention?

Q. Yes. A. No, no.

Q. Didn't you testify a little while ago that you talked with Mr. Fusaro early in the trial, the first week of the trial, about some signalling? Didn't you tell Mr. Fusaro a moment ago?

A. In answer to Mr. Fusaro's question if he had talked with me earlier in the trial regarding signals I said "Yes."

Q. And that is what first called the matter to your attention?

A. Absolutely not, sir.

Q. It was not? A. No sir.

Q. You say you saw some movements of her fingers? A. Yes sir.

Q. When you first answered the questions put to you by Mr. Fusaro, didn't you say you noticed no movement of the fingers; just about or before the recess, close to the recess didn't you say you saw no movement of the fingers?

A. When her hands were in position I said there was no movement of the fingers.

Q. Didn't you testify—

MR. FUSARO: In certain positions, he said.

MR. MASON: Just a moment; I will ask questions.

Q. Well, did you see any movements of the fingers when her hands weren't in position together? I wouldn't say that.

Q. What kind of movements of fingers?

A. Well, as illustration, you had your hands clasped in front of you a moment ago and asked if that indicated any signal. I said no. But there were many times when her hands changed and the fingers were joined together. But they were shifted.

Q. In other words, you saw movements where the hands were clasped together with the fingers interlocked and then the fingers pulled partially out from that interlocked position? A. Well, they were changed, yes.

Q. And you thought that was a signal? A. I did think so, yes.

Q. In other words, she made enumerable signs with her hands?

A. Well, I think I said that before.

Q. In other words, she shifted the position of her hands into many different positions? A. I wouldn't say many.

Q. You have described about eight or nine already, haven't you?

A. Might be so.

Q. And you have also said you noticed sometimes she would have her hands in a position where one hand rested on top of the other hand, and sometimes the fingers protruded out more than at other times?

A. I don't recall making that statement, sir.

Q. Didn't you testify you noticed she would drop her one hand so the fingers would protrude below the other hand?

A. My recollection was that when the fingers were below the other hand they were very near vertical.

Q. You mean in a position where one hand rested on the other hand and you could see the four fingers below the hand under which those fingers rested?

A. I didn't enumerate any number of fingers. I said the fingers that were showing below the hands were very near vertical position; not quite vertical but very near vertical position.

Q. And you thought that the fact that the fingers of one hand extended in a vertical position below the other hand indicated a sign of some kind?

A. When the number of fingers varied, naturally I would, sir.

Q. In other words, you noticed sometimes two, sometimes three and sometimes four fingers? A. I don't think I saw four, sir.

Q. Do you know the sign language? A. I do not, sir.

Q. And when you saw these positions, she would keep them there for several minutes at a time and then move them into another position?

A. I wouldn't say that, sir.

Q. How often? Would she keep moving them?

A. When I would glance there, that would be the position. I probably would observe them for five or ten seconds, and possibly then my attention would be taken somewhere else.

Q. So you don't know how long she kept her hands in a particular position?

A. Only when I would glance back and see a different position very soon.

Q. In other words, what you would observe was Mrs. Coe with her hands together in some position when you first looked at her, and you would look again in a little while and her hands would be in a different position. A. Well, I looked at certain times.

Q. And when you looked again, you observed the hands in a different position? A. Not always.

Q. Sometimes in the same position? A. That's right.

Q. Didn't you testify within an hour that you observed a kind of routine changes of the hands? A. I don't recollect.

Q. You don't recollect saying that within an hour? A. No.

Q. Would you say now they were routine positions of the hand?

A. I wouldn't say, I wouldn't use the word "routine." I would say the positions were comparative, but they were not set positions.

Q. In other words, you have seen other women sitting in the Court Room during your long experience as an officer of Court, with their hands folded in front of them? A. That is correct.

Q. In many different positions, that right? A. Right, sir.

Q. And you have seen some women who are fidgety and move their hands a great deal? A. Yes sir.

Q. Especially when they have an interest in the case, that right?

A. That's right.

Q. You have seen them folded together, with one hand resting on the other? A. Yes.

Q. You have seen them clasped together with the fingers interlocked?

A. That's right.

Q. You have seen them sometimes with two or three fingers resting over the other hand? A. I believe so.

Q. You have seen them with their hands resting in their lap, folded together, haven't you? A. I believe so.

Q. And in your experience as a Court Officer have you seen people sitting in the Court Room, who are interested in cases, nodding their heads when a witness was being examined?

MR. FURABO: Now I cannot see how that is important in this case. If it was anything about this case I would have no objection; but any other case, I don't think he ought to make any inquiry about any other case.

MR. MASON: Your Honor has permitted this man to give opinion. I think I have a right now to cross examine him on what is the basis of his opinion.

THE COURT: I think perhaps that is so, if that is his purpose.

WITNESS: I would answer that this is why, Mr. Mason: I have seen many witnesses involuntarily make motions in Court, who are interested.

Q. You mean people sitting in back of the room? You don't mean a witness?

A. Witnesses or persons that were prospective witnesses, or had been witnesses, particularly parties to different action. I have had to warn many in Court.

Q. Just as you warned Mrs. Coe? **A.** That is correct.

Q. And you have seen them shake their heads in disapproval in the same manner of disapproval, that right? **A.** I did, yes sir.

Q. And as a matter of fact, you went up and warned Mrs. Coe about it? **A.** Yes sir.

Q. Didn't you? **A.** Yes sir.

Q. And she told you she was sorry? **A.** That's right.

Q. That she was nervous? **A.** Well, I don't recollect that.

Q. Didn't she tell you she was nervous?

A. I believe that was the word she used, or she was sorry, she didn't intend to.

Q. And after you had warned her, you saw her doing the same thing again? **A.** No sir.

Q. Didn't you testify a little while ago that you only gave her one warning and then you saw her making these motions again?

A. That's correct.

Q. Well, that is true, you did see her?

A. I told you distinctly of warning the lady because I knew then she was practically using a negative and positive sign when I told her to stop.

MR. MASON: Well, that is not responsive.

THE COURT: I think it is. (Stenographer reads aloud question)

MR. MASON: I ask that be stricken out.

THE COURT: I think it may stand. **MR. MASON:** Exception.

Q. And I ask you now again, after you observed her and warned her— **A.** The only time, sir.

Q. The only time you observed the same motions after the warning?

A. No sir. She did not then use her head in any negative or positive sign.

Q. You didn't observe that? **A.** Not to my observation, no sir.

Q. But you noticed her hands in front of her clasped in many different positions? A. That is correct.

Q. In other words, she didn't have her hands down, she wasn't sitting on her hands all during the hearing was she? A. No sir.

Q. And you did testify that you did not see her fingers being moved, didn't you?

A. I don't believe I did, sir, not in the light that you put that question.

Q. Well, you testified to that when Mr. Fusaro was asking you questions? A. That question was qualified.

Q. Did you tell her to stop taking notes?

A. After asking the Court for instructions, I did not.

Q. You thought it was improper for her to take notes?

A. Some Judges insist not and others don't. And Judge Stapleton told me to permit the lady, if she took notes, to do it.

Q. And you didn't notice any relationship between answers Mr. Coe was giving on the stand and any motions Mrs. Coe was making with reference to the position of her hand?

A. I made no mental note of that. I try to keep testimony out of my mind while I am in the Court Room.

Q. When you saw the position of the hands with one hand extended resting on the other hand and the fingers below the hand, as you say, in a somewhat vertical position, what sign did that indicate to you?

A. I don't know what sign it indicates; I know that there was a variation of the number of fingers that were protruding.

Q. And because you saw a difference in the position of the hands and the fingers that were visible, you came to the conclusion that signs were being given by Mrs. Coe to Mr. Coe, that right?

A. That is correct, sir.

MR. MASON: That is all.

MR. FUSARO: That is all, Mr. Deary.

MR. McKEON: May it please the Court, I would like to offer some of the Nevada cases. The first point would be, unless the domicile of Mr. Coe's libel, 9494, and the full import of the decree in favor of Mrs. Coe in 121205 on March 25, 1942, were virtually concealed from the Nevada Court, Mr. Coe would not have been permitted to file his complaint. I have the names of all these cases somewhere, Your Honor, but I haven't them on this special note. 47 Nevada, 382 at 387, 386. 51 Nevada, 363. 52 Nevada, 152. 53 Nevada, 77; 54 Nevada, 44.

THE COURT: You may do all of this by way of brief at the close of the case, if you wish.

MR. McKEON: All right.

THE COURT: Would you prefer to do that?

MR. McKEON: Yes.

THE COURT: Both sides may file briefs.

MR. PERMAN: That is satisfactory, Your Honor.

THE COURT: That is, both can present their points of law.

MR. PERMAN: That is all the points of law, including the Nevada law as well?

THE COURT: All the point of law.

MR. PERMAN: That is satisfactory, Your Honor.

MR. FUSARO: If I may have a moment, if Your Honor please, I think we can decide very quickly.

THE COURT: Do you want a recess?

MR. FUSARO: That would be fine.

(RECESS. HEARING RESUMED)

MR. FUSARO: If Your Honor please, the petitioner rests.

MR. MASON: I should like to offer at this time, if Your Honor please, the report of findings of material facts made by Judge Wahlstrom in this case and filed on April 18th, 1942, being instrument numbered 26, apparently the docket number.

MR. McKEON: I object, Your Honor.

THE COURT: Give me a moment. I will hear you if you wish, Mr. McKeon.

MR. McKEON: Well, if Your Honor please, the first thought I have is this: It isn't admissible for all purposes. It may be admissible for limited purposes. If so, I think the respondent should state the limited purposes for which he offers it under the circumstances.

MR. MASON: Mr. McKeon makes the statement, attempt to impose restrictions on me which I do not assent to. However, if Your Honor wishes me to state the reason for offering this, I would be very glad to do so.

THE COURT: All right.

MR. MASON: In connection with any petition for modification of the decree, original decree, the findings of Judge Wahlstrom in the original separate support proceedings have a very material bearing on any issues

for modification that have been presented to Your Honor in the case now being tried. In other words, Your Honor has already stated that what was found by Judge Wahlstrom in the original hearing is res judicata. In the first instance, it would be impossible for Your Honor to determine what issues had been settled in the previous case without knowing what the material findings or findings of Judge Wahlstrom are in the original case, and if anything is open on a petition for modification I think it is almost axiomatic that it must be based upon any change in circumstances that may have occurred since the original order made by Judge Wahlstrom. Because this case is now being heard by a Judge who did not hear the original separate support proceedings, I don't know of any way that this Court can be in a position to determine whether there has been any change without having before it the facts found by Judge Wahlstrom, on which he made his original order. Therefore I think those findings are of particular importance to Your Honor on the petitioner's petition for modification.

MR. MCKEON: May it please the Court, after listening to Mr. Mason I am now perfectly clear that he doesn't offer them as evidence of the change. We certainly don't claim in our petition the right to change any facts; therefore I suggest it is quite clear it is not admissible; and the Court may inform himself by a reference to the former record for information. But neither side now claims the right to alter those facts as fact.

MR. MASON: I don't make any such claim.

MR. MCKEON: We don't.

MR. MASON: But how can this Court know what those facts were?

MR. MCKEON: By reference to the record; but I think it ought not to be part of this record.

THE COURT: Well, it occurs to me that much of it ought not to be because the testimony was not identical in any event, and Judge Wahlstrom had before him perhaps some facts which were different and he drew certain inferences from those facts. There is a decree that Mrs. Coe #1 was entitled to separate support on such-and-such, March 28th, 1942, and that she was then entitled to \$25 a week. That of course is part of the decree in any event.

MR. MCKEON: May I make another statement, Your Honor?

THE COURT: Yes.

MR. MCKEON: I suggest it is not admissible in the petition for contempt and that it is not admissible on Mr. Coe's petition, nor on Mrs.

Coe's petition, except perhaps as being limited as those facts are themselves limited to the question of the amount of the allowance. In his report the Court says: "I therefore feel I am not called upon to make a report," (etc., reading aloud same). And that was what I had in mind, and the original finding may be offered only for an extremely limited purpose.

MR. MASON: You state what the limited purpose is.

MR. McKENON: I have already stated it.

THE COURT: Do you still object to it?

MR. McKENON: Yes, Your Honor.

THE COURT: It is excluded.

MR. MASON: Save our exception. And I would like to make an offer of proof. That in this case, #181205, on April 13, 1942, there were filed a report of findings of material facts made by Judge Wahlstrom reading as follows:

THE COURT: I don't think it will be necessary to read the whole thing in order to make an intelligent offer of proof.

MR. MASON: Well then, may this be marked for identification as the offer of proof?

THE COURT: I think that could be, yes. (REPORT OF FINDINGS OF MATERIAL FACTS MARKED "H" FOR IDENTIFICATION)

MR. MASON: And that this is the same report which appears on Pages 14 and 15 of the Record #792 which was before the Supreme Judicial Court in these proceedings, the decision of the Supreme Court being reported in Volume 315 of the Massachusetts report. I also offer, if Your Honor please, at this time the petition of Katharine C. Coe, the petitioner in this case, to amend report of findings of material facts, filed on May 3, 1942, executed by her.

THE COURT: What is the purpose of this? I note that it was dismissed.

MR. MASON: The question of Mrs. Coe's credibility.

MR. McKENON: May it please the Court, I would suggest that this is clearly inadmissible. To make it admissible I think the whole record would have to be in, because the purpose in filing the motion was to lay the foundation for argument to the full Court, but the evidence taken by the Commissioner doesn't warrant a finding on Page 14, so that in no sense is it a contradiction of Mrs. Coe, but was offered solely to repudiate

that finding by the Court in comparison with the evidence actually taken. And it has no value and can have no value without a comparison of that evidence.

THE COURT: Well, it isn't a statement made by her in any event; it is merely asking that the Judge incorporate those statements that he made in his findings.

MR. MCKEON: That is right.

THE COURT: It is excluded.

MR. MASON: Save our exception. And I make an offer of proof, and if Your Honor please, in lieu of reading the contents of this petition may it be marked for identification and accept in lieu of an oral statement in offer of proof?

THE COURT: Yes. (MARKED "T" FOR IDENTIFICATION)

MR. MASON: And that is the same petition which appears on Page 16 of the record previously referred to, being #792, which was the record on the appeal in this case heard by the Supreme Court, the decision on which was reported in Volume 315 in the Massachusetts Reports.

THE COURT: And I understand you are offering it for the purpose of contradicting Mrs. Coe #1.

MR. MASON: And may I state at this time, that we also offer it on the issue of modification, petition for modification.

THE COURT: You may offer it on that ground if you wish, but I exclude it on that ground. That is not a statement made by her.

MR. MASON: Well, it is a statement which she makes admitting the statements made by Judge Wahlstrom in the original case.

THE COURT: That he made the statement.

MR. MASON: That's right. In other words, if Your Honor please, it seems to me both are important, the material facts which we have just offered and the last instrument are of prime importance to this Court, because the petitioner cannot come into this Court; as I rather suspect was intended and planned, for the purpose of having a re-hearing on an issue fully tried out before Judge Wahlstrom with which they were dissatisfied as appears from their appeal to the Supreme Court, which appeal was dismissed, and now under the guise of a petition for modification come in here and attempt, and I think it has been very obvious, attempt to retry that whole question again before another Judge because they were dissatisfied with the previous Judge's finding. And on the petition for

modification the issues which were tried out before the original Court are not open for retrial before another Judge on a petition for modification. And how a Judge who did not hear the original petition for modification can intelligently, it seems to me, determine—

THE COURT: You agree that it is improper to attempt a decision by another Judge on a matter that has been decided before?

MR. MASON: Wholeheartedly, Your Honor.

THE COURT: I am glad you say that, particularly in view of the fact that you people got three decisions on the question of vacating the certification. Let me call your attention to the fact that you called the matter before Judge Wahlstrom. He denied it. You presented to before Judge Atwood. He denied it. You presented it before me, and I denied it; which you didn't have a right to do.

MR. MASON: I respectfully submit with a pending petition of that kind it is perfectly proper to re-submit to the Judge who was going to hear the case a question which vitally, it seems to me, effected him and on which he fairly should have had an opportunity to pass.

THE COURT: Well, I feel you have had three decisions on it.

MR. MCKEON: May it please the Court, for the limited purpose of showing that Mrs. Coe claims that Judge Wahlstrom did say those things I have no objection.

THE COURT: That, I think is the only purpose on which I would admit it. Because it isn't anything she says. It is something she says somebody else said, and asks to have a finding made concerning the fact.

MR. MASON: My point was that on the petition for modification in which the only issues open, I respectfully submit, are change of circumstances, this Court cannot determine that fairly and properly, it seems to me, without the clear basis which appears in Judge Wahlstrom's report of material facts on which he made his original order. That, it seems to me, would be one of the things that this Court would be most interested in having.

THE COURT: Well, I don't think that I am bound to find the same facts on different evidence.

MR. MASON: If that is so, Your Honor, then your previous ruling that Judge Wahlstrom's findings were res judicata seems to be reversed by your present statement.

THE COURT: Not at all. The decree is res judicata.

MR. McKEON: After ten days of trial I would like to say to counsel for the respondent that if they don't stop making absolutely foolish claims on the law I shall understand them to be deliberately making them, knowing them not to be law.

MR. PERMAN: I move that the remark be stricken from the record. I will withdraw the motion, Your Honor.

THE COURT: Well, I must say that I have reached the same conclusion in many instances.

MR. MASON: We regret that we are so characterized, Your Honor, but nevertheless—

THE COURT: Reluctantly so.

MR. MASON: But nevertheless we insist that we have throughout this hearing attempted to preserve our client's rights.

THE COURT: I hope so.

MR. PERMAN: And expressed the law as we have viewed it and as we feel the law to be.

THE COURT: I sincerely hope that is so.

MR. McKEON: But the difficulty I find with it is that they don't offer any authority to support any contention since this trial began.

MR. PERMAN: We haven't finished the trial, and at no time was it proper to argue the case. We have presented it insofar as the evidence was concerned and we have taken our objections and exceptions as we have conceived the law to be. We have treated with the various evidence as being competent or incompetent. We have viewed the law; and we have done so in all sincerity and in all conscientiousness.

MR. McKEON: Well, as I am going to argue to the contrary, I state now that in my view that is not so.

MR. FUSARO: Do you rest now?

MR. MASON: No; we just had another thing excluded here. I should like to call Your Honor's attention to a statement made by counsel for the petitioner which appears in the record on appeal from the decision of Judge Wahlstrom's dismissing the petitioner's petition for contempt and petition for modification; the record, #835, which was marked for identification early in the hearing, in lieu of an offer of proof.

MR. FUSARO: What page?

MR. MASON: Page 93. In the course of the argument by Mr. McKeon in discussion with the Court in the previous hearing before Judge

Wahlstrom, pursuant to which he sustained the respondent's plea in bar. Mr. McKeon, counsel for petitioner, stated, and this is Page 93: "She here is confirming the marriage—

THE COURT: Would you mind giving me the line?

MR. MASON: 9th line: "She here is confirming the marriage and the decree of this Court under the Massachusetts law," and I insert parenthetically, referring to the respondent, "He is repudiating it." (etc., reading aloud balance of statement): "She" referring to the petitioner, Katharine C. Coe.

MR. McKEON: In order that this may not seem to be another . . . I should like to state it is expressly obvious that Mrs. Coe was there confirming her marriage to Mr. Coe, and not confirming Mr. Coe's fake marriage to Miss Allen.

THE COURT: Well, I will note the statement.

MR. PERMAN: So far as the comment that was just made, I should like to point out that the record obviously speaks for itself.

MR. McKEON: I think it does too.

THE COURT: Well, it is ten minutes to four.

MR. MASON: Has Your Honor some plan in mind about my arguments?

MR. FUSARO: Well, have you rested?

MR. MASON: No, but it might make a difference.

THE COURT: Have I interrupted you?

MR. MASON: Will we continue on with the arguments after the conclusion of evidence, immediately after?

MR. FUSARO: We would like to argue as soon as possible after the conclusion of the evidence; but we would like to know, Your Honor, whether they have rested.

THE COURT: Well, I suppose both sides must rest before arguments.

MR. FUSARO: Have you rested now?

MR. MASON: Well, if the Court is going to suspend now, we would prefer to do so, and I think we would have very little more, if any, to offer in the morning.

THE COURT: Let me ask you how long do you want for arguments, both sides?

MR. FUSARO: I was going to suggest to the Court that both Mr. McKeon and myself would like to argue in view of the extraordinary

importance of the case. The evidence, of course, has been gone into in detail, it is complex, and the points of law involved in the case we feel are many, and it might take time to bring all those to Your Honor's attention. We decided, with Your Honor's permission we would both like to argue this case, and I will state that now so that they may have the same opportunity.

THE COURT: If I granted it to one side I would grant it to the other.

MR. PERMAN: I am perfectly willing to abide by any time limit Your Honor may wish to set.

THE COURT: Well, within certain limits. I would like to give you all the time you feel you need.

MR. PERMAN: Has Your Honor any suggestions or recommendations along those lines?

MR. FUSARO: I'm sorry to interrupt the question, Your Honor, but I want to ask how much time they are going to take with any evidence they have yet to put in.

MR. MASON: I don't think we would take more than an hour, if that, tomorrow on any further evidence. Probably less than that.

THE COURT: I would certainly give you that. An hour and a half each?

MR. FUSARO: That is quite satisfactory to us, Your Honor.

THE COURT: Now if you want to take an hour and a half, you divide that.

MR. PERMAN: I wonder if Your Honor meant an hour and a half on each side.

MR. McKEON: I was just wondering how much time it is going to take if I am going to talk about Nevada law.

THE COURT: If I grant you more time, I would have to grant more to the other side. Well, you remember I said I would give you an opportunity to file a brief, both sides.

MR. McKEON: Yes, Your Honor.

THE COURT: Couldn't you cover a good deal of it in a brief?

MR. McKEON: Yes, I can, but I am very sure that the facts cannot be fairly argued without some attention being given to various propositions of Nevada law.

THE COURT: Yes, that would be true. How much time do you think you need then?

MR. McKEON: Well, I think I have never asked for additional time before and I wouldn't do so now except for this Nevada law business.

THE COURT: Can we finish tomorrow?

MR. McKEON: Oh yes.

MR. MASON: It all depends on how much time you grant Mr. McKeon. I think it is wiser to put some limitation of time on each side.

MR. McKEON: I shall not now ask for any additional time, but will ask leave if I find it necessary—and I shall try not to make it necessary—at the time of argument. But I shall not ask for very much time, and I may ask for more.

THE COURT: Well, if we take recess there are not three hours in the morning, and there are not two full hours in the afternoon. Now I will listen to you both for the whole day.

MR. McKEON: I will certainly not carry over beyond tomorrow. I will make every effort to boil it down. But there is so much here that in my view depends upon inference, I wouldn't like to feel that what I had to say was left unfinished.

MR. MASON: Well, Cicero said if he had more time he could write a shorter letter. I think that might apply to Mr. McKeon.

THE COURT: Well, you have will overnight to prepare your arguments. Suppose we try to divide the hours tomorrow, having in mind the recess.

(HEARING SUSPENDED UNTIL 10 A.M. FEBRUARY 27, 1945)

FEBRUARY 27TH, 1945 HEARING

THE COURT: Now yesterday you filed an answer. Of course you can only file an answer at this state by leave of Court. I told you if you filed an answer that it would be subject to certain conditions and those conditions I had stated at least, I would say, fifteen times, including the hearing on July 10th. Now after permitting you to file the answer giving you leave to file the answer late with the natural consequences of putting the plea in bar out, as I told you it would, you took an exception. In other words, you took an exception to something I did at your request. That could be an equivalent of withdrawal of request that it be filed. It is one or the other.

MR. MASON: I understood Your Honor to say after you allowed the answer to be filed that you over-ruled the plea in bar.

THE COURT: I told you that would happen before you filed the answer, because I told you that you could not have the same matter in your answer as in your plea in bar. That is the matter I said I had stated at least fifteen times—it may run to twenty or twenty-five times. It started last July. I said it all day long that day. I finally read from it here and I said if you file an answer setting up the same matter as the plea in bar, your plea in bar would be out. In other words, you could not raise the same questions by a plea in bar and by an answer. Now if you persist in that exception I will rule out the answer and rule the plea in bar in, because you cannot have both.

MR. PERMAN: May it please Your Honor, we have taken exception to Your Honor's over-ruling of the plea in bar in so far as that over-ruling may be construed as an over-ruling of the plea in bar on the merits, and we are satisfied to have our exception—

THE COURT: It couldn't possibly be an over-ruling on the merits. It couldn't possibly be.

MR. MASON: As I understand it, Your Honor's position is that we cannot set up the same defense in the plea in bar and in the answer.

THE COURT: That's it.

MR. MASON: Similar to setting up a defense of laches in a plea in bar or demurrer; you can't set it up in an answer too. That seems to be the significance of Your Honor's ruling. However, we have to be bound by your ruling that we cannot have the same defenses set up in the plea in bar as in the answer. That I understand to be Your Honor's ruling.

THE COURT: It is fundamental. Let me give you a little dissertation on pleas in bar. In most jurisdictions today the plea in bar has been . . . and you may set up the same questions in your answer. In Massachusetts you may file a plea in bar and you may file an answer. It is the only jurisdiction that I know of throughout the whole common law realm, if I may call it that, where that may be done. But even in Massachusetts you cannot set up the same matters in a plea in bar that you may set up in an answer. In Massachusetts you may file a plea in bar and you may file an answer provided you do not set up the same matters. In nearly every other jurisdiction the filing of an answer automatically over-rules a plea in bar in any jurisdiction, and it automatically over-rules it if you set up the same

matters. Of course this goes beyond that, because it is a situation where you cannot file an answer except by leave of Court, and I said that if you filed an answer your plea in bar was out, because you could not have the same matters decided twice. In the face of that, you filed your answer and then you took an exception. So if you took an exception it is practically equivalent to asking me not to be permitted to file an answer.

MR. MASON: I make this statement only for the sake of clarification, Your Honor. I remember quite distinctly that Your Honor's statement was "I over-rule the plea in bar."

THE COURT: Yes.

MR. MASON: Now if that is a matter of over-ruling the plea in bar on the merits, that is one thing. I understand now Your Honor didn't?

THE COURT: It couldn't possibly be on that; how could I possibly do that when I just permitted you at the same time to file an answer setting up the same matters? In other words, if the same matters were before me?

MR. MASON: I also understand that all the evidence that was introduced at the hearing which at times was indicated to be evidence in connection with the plea in bar is accepted by Your Honor on the respondent's answer setting up the same defenses?

THE COURT: Yes, yes.

MR. MASON: Well, in so far as we are required to elect, in view of Your Honor's ruling we will rely on the same defenses in the answer as were set up in the plea in bar.

THE COURT: You don't take exception then to the filing of the answer?

MR. MASON: No; we didn't intend to.

MR. McKEON: I think, if Your Honor please, you haven't stated that accurately. Exception was taken to over-ruling of the plea in bar and not to filing of answer.

THE COURT: But it was equivalent to that.

MR. FUSARO: They are waiving it now.

MR. McKEON: That is what I want to have clear.

MR. MASON: I would like to ask Mr. Fusaro at this time to produce copy of the letter sent by Mr. McKeon to the Supreme Judicial Court following the arguments before the Supreme Judicial Court in the case of Coe vs. Coe in 818 Massachusetts.

MR. FUSARO: I have no such letter.

MR. MASON: At 232. Have you a copy of the letter, Mr. McKeon, that was sent to the Supreme Judicial Court?

MR. MCKEON: Well, I believe I have, but I haven't it with me; because you gave me no notice it would be required. I don't know now what the purpose is.

MR. MASON: I will explain the purpose, if Your Honor please. It is our understanding that within two days after the Nevada decree was entered September 19th, 1942, the separate support case on the appeal by the petitioner was argued in the Supreme Judicial Court, and following that there was correspondence between the counsel for the petitioner and the Court or the clerk of the Court, Supreme Judicial Court, stating the petitioner's position that the Nevada proceedings were null and void and of no legal force and effect, and the same information was conveyed to counsel for the respondent. That is the purpose of offering it.

MR. MCKEON: I still haven't heard you state the purpose. You have been stating some facts, perhaps, but I haven't heard you state the purpose, what you expect to prove.

MR. MASON: I think it may be material, Your Honor, in explaining a part of the testimony of Mr. Coe to the effect that he acted upon advice of counsel in not continuing to make payments under the contract between the petitioner and respondent entered into in Nevada.

MR. MCKEON: I suggest if that is so, Mr. Coe is the proper party to explain it, and if not, Mr. Perman.

MR. MASON: As to how we proceed with proof is something, I think, we should decide, and not you, Mr. McKeon.

MR. MCKEON: Well, I suggest that the proper party to approve the advice of counsel is Mr. Coe.

MR. MASON: I would ask again Mr. McKeon to produce a copy of the letter.

MR. MCKEON: If I had it here I would be very glad to produce it. If you had notified me, I would be very glad to produce it. It just happens that I haven't got it here because I thought it was of no import.

MR. MASON: It may save time, if Your Honor please, if Mr. McKeon will state the contents of the letter in substance to the effect that he regarded the Nevada proceedings as having no validity and of no legal force and effect.

MR. McKEON: I am still unable to see what that has to do with advice given Mr. Coe by Mr. Perman. To make it material here, I will do my best if Mr. Perman gives me a copy of his letter to refresh my recollection; I will talk from that.

THE COURT: Of course he is here maintaining that very issue.

MR. MASON: But I wanted to fix the time when he took that position.

MR. McKEON: My first recollection would be that it was not on September 21; it wasn't until after a letter either directly to me from Mr. Perman or from Chief Justice Field in the way of a copy of Mr. Perman's letter to him, asking me what I thought of Mr. Perman's claim that the case was mooted.

MR. MASON: Can you fix the approximate date?

MR. McKEON: If Mr. Perman will show me the date of his letter I perhaps can.

MR. MASON: We will try to produce that date.

MR. McKEON: I still am willing to claim that this is inadmissible and has nothing to do with the advice given by Mr. Perman to Mr. Coe.

MR. MASON: Well, Mr. McKeon, we have letter dated September 25th, 1942, a copy of which was mailed to you; the original was mailed to the Chief Justice of the Supreme Judicial Court.

MR. McKEON: I ask the Court to find what specific, particular piece of advice to Mr. Coe is related to my letter.

THE COURT: You have asked me to find?

MR. McKEON: No, I should be glad to be informed.

MR. MASON: I would be very glad to inform the Court as to that.

THE COURT: I understand you are offering this in lieu of evidence. Of course I can accept that only if the other side agree to it.

MR. MASON: I want to avoid as much as possible putting any counsel on the stand. I think it is something that ought to be avoided if possible.

THE COURT: All right. There is no objection.

MR. McKEON: I object; until I see its pertinency I am certainly going to object.

THE COURT: Do you want to state it first?

MR. McKEON: So that you may rule on my objection; if you think it is appropriate after objection I will do my best to—

THE COURT: Of course I cannot allow it at all unless you agree.

MR. McKEON: You can hear it in order to rule on my objection.

THE COURT: Well, let him state it; go ahead.

MR. MASON: It is introduced or offered, Your Honor, for the purpose of showing that the counsel for the petitioner immediately following entry of the Nevada decree took the position that that decree and all proceedings in Nevada, including the contract as entered into between the parties was of no force and effect and not binding on the petitioner. And in view of that position, until the position of the petitioner with reference to the proceedings in the Massachusetts Court was ascertained, the advice was given to the respondent, Mr. Coe, not to continue to make any payments under the Nevada contract until the position of the petitioner was ascertained with reference to respecting and honoring that contract.

MR. McKEON: I have no objection to that ground except as to the inference which ought to be drawn from it. I agree that I took that position shortly after September 25th and wrote my views to the Chief Justice of the Supreme Judicial Court after Mr. Perman had given his opinion that the case had become moot, and the full Court seems to have taken the view that the case was not moot and decided it. I still am unable to see how a letter written prior to my letter can be converted into a theory that my letter—

MR. MASON: We simply used our letter to help Mr. McKeon as to the date of his letter.

MR. McKEON: I cannot fix the date, but doubtless it was shortly after this, because I do recall that that letter from Chief Justice Field to me acknowledging receipt of my letter was dated either October 14th or 15th of '42. So for whatever it is worth, I don't object to that.

MR. MASON: Now if Your Honor please, does Your Honor consider the rescript from the Supreme Judicial Court in the case of Coe vs. Coe, being these separate support proceedings reported in 313 Mass., 232, as before Your Honor?

THE COURT: Yes. You mean the decision on the original—

MR. MASON: Appeal by the petitioner.

THE COURT: Yes; yes, of course. It is part of the law of the case.

MR. MASON: The respondent rests, Your Honor.

THE COURT: All right. Do you wish the arguments taken?

MR. McKEON: I think they ought to be taken.

THE COURT: I think it would be well to stay here and take them, Miss Quinn.

MR. FUBARO: May I have about a minute before we decide whether

THE COURT: Yes, I think so.

(RECESS. HEARING RESUMED)

MR. FUSARO: If Your Honor please, we have no further evidence.

MR. MASON: We have just one motion to submit at this time at the close of the evidence with reference to striking certain evidence from the record. Many of these matters have already been passed upon by Your Honor, but were passed upon before the evidence was concluded, and therefore we would like to submit this motion at the close of all the evidence. (Hands paper to Court)

THE COURT: Well, this seems like asking me to strike from the record testimony which the Supreme Judicial Court directed should be taken, nearly all of it. In #1 you ask me to strike all the testimony concerning or relating to the respondent's domicile in Nevada. That question has already been decided by the Supreme Court, and in fact they directed that this hearing admit such testimony. "#2, all testimony concerning, relating or bearing upon any alleged violation by the respondent on the latter"—I don't understand that, "the latter provision of General Laws." Am I reading it correctly?

MR. PERMAN: That is correct. There are two clauses in Chapter 208, Section 39.

THE COURT: Oh yes, I see what you mean. I remember it now. Well, this is just another instance of asking for a decision on a matter that already has been decided by a higher tribunal than this. Let me read this to you—I have read this before, perhaps more than half a dozen times, and I have ruled on this same matter at least half a dozen times: "In the case at bar it was important to know whether the Nevada Court has jurisdiction and whether the Statute, General Laws, Ter. 208, Section 39, had been violated. The answer to these questions cannot be ascertained from the record because the petitioner was denied the right" which I think was error "to introduce evidence with respect to them." In other words, The Supreme Judicial Court sent this back. "Cases are to stand for hearing in conformity with this opinion." Now you ask me to strike out all evidence relative to those matters which the Supreme Judicial Court sent those cases back here for a re-hearing upon them.

MR. MASON: Rather than take the time of the Court now, Mr. Perman. I think will state the position of the respondent with reference to the opinion in some detail. Just briefly I wish to state that the Supreme Judicial Court did direct that the case stand for hearing for the purpose of

giving the petitioner an opportunity to attack the jurisdiction of the Nevada Court.

THE COURT: More than that.

MR. MASON: Now the respondent's position, and very briefly, is that there are some methods open or some bases open for attack on the Nevada proceeding with reference to jurisdiction; but in view of this particular case and the circumstances and facts with reference thereto now in evidence, that the issue of domicile is not open to collateral attack. It may be that other issues were open to the petitioner to attack the jurisdiction of the Nevada Court, but absolutely no evidence of any matters which could properly be the bases for a collateral attack were introduced in evidence with reference to the Massachusetts statute if there was jurisdiction in the Nevada Court. And if the jurisdiction of the Nevada Court was not attacked required in Massachusetts to give full faith and credit to the Nevada decree. That very briefly is the position of the respondent, and we submit is not inconsistent with the decision of the Supreme Judicial Court.

THE COURT: Well, of course that is a matter of argument. But you are asking me to strike out testimony which the Supreme Judicial Court ordered this Court to accept.

MR. MASON: Well, we don't agree that the Court did order this Court to accept that evidence unless facts with reference to the Nevada proceedings were such as to permit it. We submit in view of the evidence and the records in the Nevada Court, and circumstances with reference to those proceedings, under those circumstances the issue of domicile was not open.

THE COURT: Well, I think that was all decided in the last case, so I cannot strike out evidence which the Supreme Court ordered to be taken. Of course don't misunderstand me again. It certainly is still open to you to argue on the question of fact or to argue on the evidence. I am merely ruling that on the question of striking it out.

MR. MASON: I understand, Your Honor.

THE COURT: The Supreme Judicial Court also decided in previous opinion that there was no estoppel in a case of this sort. So I refuse to strike any of that testimony from the record.

MR. MASON: As we understand, the opinion of the Supreme Judicial Court merely decided that the petitioner had the right to introduce any competent evidence to attack the validity of the Nevada decree. Now the

evidence is in on that, the petitioner has been given that opportunity, and in view of the evidence we now ask the Court to strike out that evidence.

THE COURT: Well, that would be equivalent to doing the very thing that the Supreme Judicial Court said was wrong in the other case.

MR. MASON: They said it was wrong not to permit the petitioner to introduce evidence to attack the validity of the decree.

THE COURT: Yes. If I strike it out, they would be presented with the same question that they were presented with before; we would have exactly the same situation.

MR. MASON: Does Your Honor deny the motion to strike out?

THE COURT: Yes.

MR. MASON: The respondent excepts.

MR. McKEON: What the respondent refers to is on Page 32 of the opinion in the Advance Sheets. They are contending in substance that unless the petitioner violated Section 39 this evidence is not admissible, and the opinion I agree does draw a distinction between a divorce voided because it is in violation of Section 39, Chapter 208, and a divorce that might be voided upon some other grounds. The respondent in substance agrees that unless there was a violation of Section 39, Mrs. Coe is not precluded from questioning it in our Courts.

MR. MASON: We make no such agreement.

MR. McKEON: I am not asking you to make an agreement. I am stating your position, what it has got to be.

MR. PERMAN: That is not our position.

MR. MASON: Aren't these matters that will be taken up in argument?

MR. McKEON: You argued this; do you object to our arguing it?

THE COURT: Well, Mr. McKeon, I have denied the motion; doesn't that take care of it?

MR. McKEON: I think perhaps it does.

THE COURT: All right.

(Arguments followed by Messrs. Perman, Mason, Fusaro and McKeon)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

MARCH 14, 1945

I hereby certify that the foregoing is a true and accurate transcription of the stenographic record made by me in the aforementioned matter.

LAURA G. QUINN,

Commissioned Stenographer.

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

[SEAL]

PROBATE COURT

To Oliver Custer, of Reno, in the State of Nevada, or any Commissioner appointed by the Governor of said Commonwealth of Massachusetts, Justice of the Peace, Notary Public, or other officer, legally empowered to take Depositions or Affidavits, in the State of Nevada,

GREETING:

Whereas Martin V. B. Coe of Worcester, in the County of Worcester has presented to said Court a petition praying that a commission from said Court issue to take the deposition of Alan Bible, of Carson City, in said State of Nevada, in separate support proceedings brought by Katharine C. Coe, of Worcester, in said County, against said petitioner.

Now therefore, you are by these presents authorized and empowered to take the deposition of the said Alan Bible and to this end to cause the said deponent to come before you, and the deponent after having been sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, to be examined, and his testimony taken in writing. And you are to take such deposition separate and apart from all other persons, and to permit no person to be present during such examination except the deponent and yourself. And you are to put the several interrogatories and cross interrogatories subjoined to the deponent in their order, and to take the answer of the deponent to each fully and clearly before proceeding to the next, and not to read to the deponent nor permit the deponent to read, a succeeding interrogatory until the answer to the preceding has been fully taken down. And when you shall have completed the examination aforesaid, the same so taken and subscribed is to be returned, together with Commission and your doings herein enclosed, sealed, and directed to the Register of said Court at Worcester, in said County of Worcester.

Given under the seal of said Court.

Witness, HARRY H. ATWOOD, Esquire, Judge of said Court, at Worcester, this eighteenth day of September in the year of our Lord one thousand nine hundred and forty-four.

A copy. Attest:

F. Joseph Donahue

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 131205

KATHERINE C. COE

VS.

MARTIN V. B. COE

INTERROGATORIES PROPOUNDED BY THE RESPONDENT TO ALAN BIBLE,
CARSON CITY, NEVADA, A WITNESS FOR THE RESPONDENT FOR
THE PURPOSE OF TAKING HIS DEPOSITION

1. State your full name and address.
2. Are you at present the Attorney General for the State of Nevada.
3. If so, state for how long you have had the office of Attorney General.
4. In June of 1942 were you engaged in the practice of law in the State of Nevada.
5. If so, please state
 - (1) Where you then maintained your law office.
 - (2) For how long you had then been engaged in the practice of law.
 - (3) Briefly, your educational background.
 - (4) An approximation of the number of divorce cases you have handled as counsel.
6. Did Mr. Martin Van Buren Coe consult you sometime in 1942.
7. If so, please state as accurately as you can when and where Mr. Coe consulted you.
8. Please state the purpose or purposes for which Mr. Coe consulted you.
9. If Mr. Coe consulted you with reference to divorce proceedings, please state
 - (a) The ground or grounds Mr. Coe intended to rely on.
 - (b) In brief, the place and circumstances giving rise to such cause or causes.
10. Did you advise Mr. Coe as to the jurisdictional requirements of the State of Nevada for a valid divorce.
11. Did Mr. Coe express his intention of complying with the jurisdictional requirements of the State of Nevada necessary to obtain a valid divorce.
12. So far as you know did Mr. Coe comply with the jurisdictional requirements of the State of Nevada.
13. Was Mr. Coe personally present at the divorce hearing.

14. Were you present at said hearing.
15. Did you at said hearing act as counsel for Mr. Coe.
16. Was Katherine C. Coe present at said hearing.
17. Did Mr. Coe identify her to you as his wife.
18. Was Katherine C. Coe represented by counsel.
19. If so, state who appeared for Katherine C. Coe as her counsel.
20. Did Mr. Coe testify at said divorce hearing.
21. Did Mr. Coe testify at said divorce hearing that when he came to Nevada he intended to make Nevada his home.
22. Did Mr. Coe testify that at the time of the hearing the intention to make Nevada his home still abided with him.
23. Did Katherine C. Coe testify at said divorce hearing.
24. Did Katherine C. Coe at said hearing identify a property settlement contract she entered into with Mr. Coe prior to the divorce hearing.
25. Have you an opinion as to whether or not under the laws of Nevada the court granting the divorce to Katherine C. Coe had jurisdiction to hear and determine the issues under the complaint and cross-complaint for divorce between the parties.
26. If so, please state what your opinion is, citing the applicable Nevada law.
27. Have you an opinion as to whether or not under the Nevada laws, the court granting the divorce had jurisdiction over both the parties.
28. If so, please state what your opinion is, citing the applicable Nevada laws.
29. Have you an opinion as to whether or not under the Nevada laws, the court granting the divorce had jurisdiction over the cause of action.
30. If so, please state what your opinion is, citing the applicable Nevada laws.
31. Have you an opinion as to whether Mr. Coe's complaint for divorce and affidavit for service of process complied with the Nevada laws.
32. If so, please state what your opinion is citing the applicable Nevada laws.
33. Have you an opinion as to whether or not the property settlement contract executed between the parties was valid under the Nevada laws.
34. If so, please state what your opinion is, citing the applicable Nevada laws.

35. Please state whether or not the decree of divorce granted to Katherine C. Coe was a final decree of divorce.
36. Did you know that Mr. Coe remarried after the granting of a divorce to Mrs. Coe.
37. Have you an opinion as to whether or not Mr. Coe's remarriage was in conformity with the Nevada laws.
38. Did you as counsel for Mr. Coe pray to Katherine C. Coe or to her attorney on her behalf the sum of \$7500.00.
39. Did Mr. Coe consult with you after his remarriage.
40. If so please state
 - (1) As best you can recall, when Mr. Coe consulted with you.
 - (2) What was said on these occasions.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 181205

KATHERINE C. COE

VS.

MARTIN V. B. COE

A. OBJECTIONS AS TO FORM ONLY; MADE TO PLAINTIFF'S INTERROGATORIES

- Int. 8 — Too broad in scope—not showing any pertinency to the issues.
- Int. 9a—Immaterial—not confined to the grounds on which he did rely.
- Int. 9b—Irrelevant—the place and circumstances giving rise “to such cause or causes” are set forth in the record of the Nevada proceedings—and are outside the present issues.
- Int. 11—Irrelevant—calls for a statement out of court which may not be limited to the issues.
- Int. 12—Incompetent—does not call for an expert opinion, but for personal knowledge of facts obviously not known to him—it invades the province of the fact finding tribunal.
- Int. 36—Irrelevant—his knowledge of this matter is outside the issues.
- Int. 37—Calls for an opinion outside the issues.
- Int. 39—Does not call for his opinion as an expert—and is outside the issues.

Int. 40 (2)—Does not call for his opinion—and is outside the issues. Objection is made to any answer beyond a "yes and no" reply to interrogatories 10, 11, 12, 25, 27, 29, 31, 33, 35, 36, 37, 39, 40 (1).

B. CROSS-INTERROGATORIES BY THE PETITIONER TO ADAM BIBLE. THE ANSWERS THERETO NOT TO BE USED IN EVIDENCE UNLESS HIS ANSWERS TO THE ORIGINAL INTERROGATORIES ARE ADMITTED IN EVIDENCE AND ARE GERMAIN THERETO, EXCEPT AS OTHERWISE INDICATED:

1. Re Int. 10—What advice did you give to Mr. Coe as to said jurisdictional requirements? Please state fully, and all the material facts to which said opinion applied.
2. Re Int. 11—Did Mr. Coe between July 1 and Sept. 18, 1942 express to you his intent to return to Worcester forthwith, in the event his marital ties were severed?
3. Re Int. 12—What facts are within your personal knowledge as to whether Mr. Coe complied with said jurisdictioned requirements? If Mr. Coe acted in bad faith in respect of said jurisdictional requirements, what is your opinion?
4. Re Ints. 26, 28, 30, 32, 34, 35, 37—please give the pertinent statutes of Nevada and cite the causes in your court of last resort upon which you rely in support of your expressed opinions.
5. Re Ints. 25, 27, 29, 31, 33, 35, 37—please state all the material facts upon which your expressed opinions are based?
6. Before his complaint was filed in Nevada, or at any time thereafter, did Mr. Coe inform you that, in Massachusetts on March 25, 1942, his libel for divorce on the ground of cruel and abusive treatment was denied on the merits after full hearing? Or that, on the same date, after full hearing, the same court found on the merits that Katharine C. Coe was living apart from Mr. Coe for justifiable cause? Did he inform you that both said decrees were final on the merits? Please state all the facts he gave you in connection with these Massachusetts court decrees?
7. Assuming as fact that neither of the parties to said Nevada proceedings ever had a bona fide domicil in Nevada, what is your opinion as to the validity of the Nevada decree of Sept. 19, 1942? In support

of your opinion, please give the controlling Nevada statutes and cite the decisions of your court of last resort upon which you rely?

8. Assume as fact that, from about June 1 to Sept. 30, 1942, Mr. Coe acted in bad faith as to his claim of a Nevada domicil or residence, as to his claim of abandonment of his Massachusetts domicil, and as to his claim of intention to make his home in Nevada, as to his not contesting the cross-complaint, and as to the execution of the contract introduced in the proceedings, what is your opinion, as to the validity of said decree in Nevada? Please give the controlling statutes of Nevada and cite the decision of your court of last resort upon which you rely for your opinion?
9. Assume as fact that the causes alleged by Mr. Coe in his complaint had been finally adjudicated in Massachusetts as being non-existent, is it your opinion that the Nevada court had jurisdiction to adjudicate these causes as being in existence and valid causes for a divorce in his favor? Please cite controlling statutes and decisions of your court of last resort.
10. Assume as fact, that the parties never lived together as husband and wife in Nevada, that the causes alleged in the complaint and cross-complaint arose, if at all, while the parties lived together as husband and wife in Massachusetts, that Mr. Coe acted in bad faith in alleging a Nevada domicil or residence, that he merely intended to stay in Nevada till the marriage ties were dissolved and then return at once to his Massachusetts domicil, what is your opinion of the validity of the decree? Please cite pertinent statutes and cases of your court of last resort.
11. Assuming as fact that the Nevada Court had no jurisdiction as to the person of Mr. Coe, or as to his alleged causes for divorce, is it your opinion that it had jurisdiction of the cross-complaint? If your opinion is affirmative, please state all the material facts upon which you base your opinion, and cite the Nevada statutes and decisions of your court of last resort upon which you base said opinion.
12. As to the said contract, was it executed, and the \$7500 paid before the hearing? Did Mr. Coe then, expressly or implicitly, agree not to give evidence in opposition to the cross-complaint? Did the parties contemplate that said contract would be incorporated in the decree and then become effective? If neither party had a bona fide domicil

in Nevada, is it your opinion that the Nevada court had jurisdiction to ratify, confirm, or affirm said contract? If so, please cite statutes and decisions of your court of last resort upon which you rely?

If Mr. Coe executed that contract in bad faith, did your court have jurisdiction to validate it? If so, please cite statutes and cases of your court of last resort upon which you rely? Assuming as fact that Mr. Coe executed said contract in bad faith, and then intended to not live up to it, in your opinion would said contract be void, or voidable? Would it be enforceable by him? In support of your opinion, please cite statutes and decisions of your court of last resort.

KATHARINE C. COE,
By her Attorney
FRANCIS P. MCKEON

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

PROBATE COURT
No. 181205

KATHERINE C. COE
vs.
MARTIN V. B. COE

DEPOSITION OF ALAN BIBLE

BE IT REMEMBERED, that pursuant to the annexed Commission, interrogatories and cross-interrogatories attached hereto, the deposition of Alan Bible, a witness for the respondent in the above-entitled action, was taken before me, John C. Kelly, a Notary Public in and for the County of Storey, State of Nevada, in Carson City, State of Nevada; on the 11th day of October, 1944, commencing at the hour of 2:30 o'clock P.M. of said day; that said Alan Bible was first duly sworn by me to tell the truth, the whole truth and nothing but the truth, and I thereupon while said witness was under oath propounded to him the interrogatories and cross-interrogatories attached to said Commission and he gave to them the following answers, respectively:

To Interrogatory No. 1 he answered:—

Alan Bible. Office address, Supreme Court Building, Carson City, Nevada. Home address, 301 West King Street, Carson City, Nevada.

To Interrogatory No. 2 he answered:—

I am.

To Interrogatory No. 3 he answered:—

Since January 4, 1943.

To Interrogatory No. 4 he answered:—

I was.

To Interrogatory No. 5 he answered:—

(1) Employed as Deputy Attorney-General of the State of Nevada. In June, 1942, I was engaged in the private practice of the law with Senator Pat McCarran, E. C. Lyon Building, Reno, Nevada.

(2) In the State of Nevada since April 11, 1935.

(3) Graduated from the University of Nevada with a B.A. degree in 1930; graduated from Georgetown Law School, Washington, D.C., with an LLB degree in 1934.

(4) Approximately 150.

To Interrogatory No. 6 he answered:—

Yes, he did.

To Interrogatory No. 7 he answered:—

Reference to my files shows that I first met with Martin Van Buren Coe in Reno, Nevada, June 11, 1942.

To Interrogatory No. 8 he answered:—

Mr. Coe consulted me for the purpose of talking over his domestic affairs.

To Interrogatory No. 9 he answered:—

a. Mr. Coe intended to rely upon the statutory ground of extreme cruelty.

b. It is likewise my recollection and, my penciled memorandum shows that Mr. Coe intended to rely upon the incident which occurred, according to the memorandum in my own handwriting, on April 14, 1942, in the State of New York. My memorandum shows that Mrs. Coe, on or about that day, phoned him twice; that she later came up in an elevator to his apartment; that thereafter she talked about various phases of the case; and that upon leaving she told him that she would make more trouble if he (Martin) started anything. In addition, my memorandum made at the time of my first conference with Martin states that she (Mrs. Coe) told him, "I will kill you, if I see you with anybody else."

To Interrogatory No. 10 he answered:—
I did.

To Interrogatory No. 11 he answered:—
He did.

To Interrogatory No. 12 he answered:—

Yes. He very definitely expressed the intention of making Nevada his permanent home. In support of this I call attention to the fact that he opened a Nevada banking account; that he took out a post office box at the Reno Post Office; that he secured a safety deposit box at the bank; that he secured a Nevada driver's license for himself; and that he secured Nevada plates for his car which he had with him. Mr. Coe likewise indicated that he was interested in purchasing a Nevada home.

To Interrogatory No. 13 he answered:—
Yes, he was.

To Interrogatory No. 14 he answered:—
Yes.

To Interrogatory No. 15 he answered:—
I did.

To Interrogatory No. 16 he answered:—
Yes.

To Interrogatory No. 17 he answered:—
Yes.

To Interrogatory No. 18 he answered:—
Yes.

To Interrogatory No. 19 he answered:—
H. W. Edwards, a former District Judge of the State of Nevada, and at the time of his employment by Mrs. Coe a member of the law firm of Withers and Edwards, Stack Building, Reno, Nevada.

To Interrogatory No. 20 he answered:—
He did.

To Interrogatory No. 21 he answered:—
He did.

To Interrogatory No. 22 he answered:—
He did.

To Interrogatory No. 23 he answered:—
She did.

To Interrogatory No. 24 he answered:—
She did.

To Interrogatory No. 25 he answered:—
I have.

To Interrogatory No. 26 he answered:—

It is my opinion that the Nevada Court has jurisdiction. Section 9460, Nevada Compiled Laws, 1929, as amended provides as follows:

"Section 22. Divorce from the bonds of matrimony may be obtained by complaint under oath to the district court of any county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, or in which the parties last cohabited, or if the plaintiff shall have resided six weeks in the State before suit be brought for the following causes, or any other causes provided by law: . . .

"Sixth: Extreme cruelty in either party. . . .

"Unless the cause of action shall have accrued within the county while the plaintiff and defendant were actually domiciled therein, no court shall have jurisdiction to grant a divorce unless "either the plaintiff or the defendant shall have been a resident of the State for a period of not less than six weeks preceding the commencement of the action. . . ."

To Interrogatory No. 27 he answered:—

Yes, I have.

To Interrogatory No. 28 he answered:—

In my opinion the Nevada Court granting the divorce had jurisdiction over both parties. Section 8573, Nevada Compiled Laws, 1929, provides as follows:

"Actions, How Commenced: Section 74. Civil actions in the district court shall be commenced by the filing of a complaint with the Clerk of the Court and issuance of a summons thereon; provided, that after the filing of the complaint a defendant in the action may appear by answer, demurrer, or notice of motion filed in the cause, excepting motions to quash service, or denying the sufficiency of the process or the jurisdiction of the Court over the subject matter or the person, whether the summons has been issued or not, and such appearance shall be deemed a waiver of summons. As amended statutes 1915, 821."

In this particular case the divorce complaint setting forth the necessary jurisdictional allegations was filed on July 27, 1942. On August 28, 1942, the defendant in the Nevada action, Katherine C. Coe, by one of her attorneys, H. W. Edwards, filed in the Nevada Court a demurrer. Thereafter on the 19th day of September, 1942, the defendant in the Nevada action, Katherine C. Coe, by one of her attorneys, H. W. Edwards, and under her sworn verification, filed an answer and cross-complaint in the Nevada action, which answer, among other allegations, admitted the bona fide residence of the plaintiff, Martin V. B. Coe.

To Interrogatory No. 29 he answered:—

I have.

To Interrogatory No. 30 he answered:—

In my opinion the Nevada Court had jurisdiction over the cause of action. Section 9460, Nevada Compiled Laws, 1929, as amended, provides as follows:

"Section 22. Divorce from the bonds of matrimony may be obtained by complaint under oath to the district court of any county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff reside, or in which the parties last cohabited, or if the plaintiff shall have resided six weeks in the State before suit be brought for the following causes, or any other causes provided by law; . . .

"Sixth: Extreme cruelty in either party . . .

"Unless the cause of action shall have accrued within the county while the plaintiff and defendant were actually domiciled therein, no court shall have jurisdiction to grant a divorce unless either the plaintiff or the defendant shall have been a resident of the State for a period of not less than six weeks preceeding the commencement of the action. . . ."

To Interrogatory No. 31 he answered:—

Yes.

To Interrogatory No. 32 he answered:—

It is my opinion that Mr. Coe's complaint for divorce complied with the Nevada laws. See Section 9460, Nevada Compiled Laws, 1929, cited in answer to questions 26 and 30, supra. The affidavit for service of process complied with Sections 8582, and 8583, Nevada Compiled Laws, 1929, as amended, which sections read as follows:

"Section 8582. When the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the Court, or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

"PROVIDED, When said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such

case, it shall be presumed that such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This section shall apply to all manner of civil actions, including those for divorce. As amended, Stats. 1923, 275; 1933, 174."

"Section 8583. The order shall direct the publication to be made in a newspaper, to be designated by the Court or judge thereof, for a period of four weeks, and at least once a week during said time. The case of publication, where the residence of a non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint, out of the state, shall be equivalent to completed service by publication and deposit in the post office, and the person so served shall have thirty days after said service to appear and answer or demur. The service of summons shall be deemed complete in cases of publication at the expiration of four weeks from the first publication, and in cases when a deposit of a copy of the summons and complaint in the post office is also required, at the expiration of four weeks from such deposit. As amended, Stats. 1931, 159."

It should be noted in this case that the defendant, Katherine C. Coe, appeared by demurrer, by answer and cross-complaint and in person before the Nevada Court, which would bring her within the proviso of Section 8573, cited in answer to question 23, supra.

To Interrogatory No. 33 he answered:—

I have.

To Interrogatory No. 34 he answered:—

It is my opinion that the property settlement contract executed between the parties was valid under the Nevada laws. Sections 3373, 3374, and 3375, Nevada Compiled Laws, 1929, as amended, provide as follows:

"Section 3373. CONTRACT BETWEEN HUSBAND AND WIFE. Either husband or wife may enter into any contract, engagement, or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried, subject in any contract, engagement, or transaction between themselves, to the general rules which control the actions of persons occupying relations of confidence and trust towards each other."

"Section 3374. CONTRACT OF SEPARATION.—AGREEMENT NOT AFFECTED. WHEN. A husband and wife cannot by any contract with each other alter their legal relations except as to property, and except that they may agree to an immediate separation, and may make provisions for the support of either of them and of their children during such separation. In the event that a suit for divorce is pending or immediately contemplated by one of the spouses against the other, the validity of such agreement shall not be affected by a provision therein that the agreement is made for the purpose of removing the subject matter thereof from the field of litigation, and that in the event of a divorce being granted to either part, the agreement shall become effective and not otherwise."

To Interrogatory No. 35 he answered—

The decree of divorce was a final decree. No appeal has ever been taken or perfected from this decree.

To Interrogatory No. 36 he answered:—

I did.

To Interrogatory No. 37 he answered:—

I have, and in my opinion Mr. Coe's remarriage was in full conformity with the Nevada laws.

To Interrogatory No. 38 he answered:—

I paid the sum of \$7,500.00 to H. W. Edwards, as attorney on behalf of his client, the defendant, Katherine G. Coe.

To Interrogatory No. 39 he answered:—

He did.

To Interrogatory No. 40 he answered:—

It is my recollection that Mr. Coe consulted me a number of times during June of 1943. My calendar and files show that I met with Mr. Coe several times during the first part of June, 1943.

It is my definite recollection that the Coes were interested in purchasing property in Nevada. I believe that the proceedings in Massachusetts were started during the time that they were in Nevada and, as near as I can recall, I did tell them that they should return to Massachusetts and defend the suit there, since, in my opinion, the agreement entered into in Nevada, and the divorce thereafter granted, were valid and binding upon both parties.

To Cross-Interrogatory No. 1 he answered:—

I advised Mr. Coe that it was necessary for him to satisfy the Court or jury, as the case might be, that his physical presence in this state for the statutory period of time prescribed in Section 9460, Nevada Compiled Laws, 1929, as set forth in my answer to Interrogatory No. 26, preceding and including the date of commencement of his action, was accompanied by his intent to make Nevada his home and remain here permanently or at least for an indefinite period of time.

At the hearing Mr. Coe testified that he had resided in the State of Nevada more than six weeks prior to the filing of his complaint. He further stated that he intended to make Nevada his home for an indefinite period of time and that that intention still abided with him. He likewise testified that he opened a Nevada banking account; that he had taken out a post office box at the Reno Post Office; that he had secured a safety deposit box at the bank; that he had secured a Nevada driver's license for himself; and that he had secured Nevada plates for the car which he had with him. Upon further issue and admission in the defendant's answer of the bona fides of the plaintiff's residence, the Court found as a fact that he was a bona fide resident of Nevada.

To Cross-Interrogatory No. 2 he answered:—
No.

To Cross-Interrogatory No. 3 he answered:—

I believe I have answered this question in the second paragraph of my answer to Cross-Interrogatory No. 1.

As to the second question asked in Cross-Interrogatory No. 3, it is impossible for me to answer this question since bad faith is not defined nor is my opinion directed to any facts indicating that Mr. Coe in any way acted in bad faith. In any event, it occurs to me that the question which you ask is a question which was properly for the determination of the trial court since the question of the residence of the plaintiff, Martin V. B. Coe, is a fact to be proven in the same manner as any other fact alleged in the complaint. The Court's finding resolved this question in favor of Mr. Coe.

To Cross-Interrogatory No. 4 he answered:—

The pertinent statute in answer to Interrogatory No. 26 was set forth in answer to that question. In addition, see the cases of *Lamb v. Lamb*, 57 Nev. 421; *Drespel v. Drespel*, 56 Nev. 368; *Walker v. Walker*, 45 Nev. 105; *Confer v. District Court*, 49 Nev. 18.

The pertinent statutes in answer to Interrogatory No. 28 were set forth in full in my answer to that question. Also see *Iowa Mining Company v. Bonanza Company*, 16 Nev. 64; *Rose v. Richmond*, 17 Nev. 54; *Harris v. Helena G. Mining Company*, 29 Nev. 506.

Re Interrogatory No. 30, pertinent statutes were cited in my direct interrogatory answer to this question. Also see *McLaughlin v. McLaughlin*, 48 Nev. 155.

Re Interrogatory No. 32, pertinent statutes were cited in my answer to this direct interrogatory. Also see *Little v. Currie*, 5 Nev. 90; *Rose v. Richmond*, 17 Nev. 54; *Buaas v. Buaas*, 62 Nev. (No page number is given on this report since this case is very recently decided. It can be found at 147 Pacific (2d) 495.)

Re Interrogatory No. 34, pertinent statutes were cited in my answer to this direct interrogatory.

Re Interrogatory No. 35, see the case of *McLaughlin v. McLaughlin*, 48 Nev., subparagraph numbered 2, page 162.

Re Interrogatory No. 37, the pertinent Nevada statutes concerning the law of marriage may be found at Sections 4051—4055, Nevada Compiled Laws, 1929, as amended.

To Cross-Interrogatory No. 5 he answered:—

Material facts upon which my expressed opinion was based in answer to direct interrogatory No. 25 have been given in answer to direct interrogatory Nos. 9b, 13, 21, 22, 23, and 32. Also my answer to Cross-Interrogatory No. 1.

The material facts upon which my answer to Direct Interrogatory No. 27 were based has been answered in my answer to Interrogatory No. 28.

The material facts in answer to Interrogatory No. 29 were based in part upon the facts set forth in my answer to Direct Interrogatory No. 9b.

The material facts in answer to Direct Interrogatory No. 31 were based upon the fact that the defendant, Katherine C. Coe, appeared by demurrer, by answer and cross-complaint and in person before the Nevada Court. See my answer to Direct Interrogatory No. 32.

The material facts upon which my answer to Interrogatory No. 33 was based was the property settlement agreement signed and executed by the parties; introduced in evidence, and validated and approved by the Court.

The material facts upon which my answer in Interrogatory No. 35 was based is the fact that after the entry of the final decree of divorce no appeal was taken from the judgment within the period of six months as provided by the Nevada statutes. See Section 9385.60, 1929 Nevada Compiled Laws, 1941 Supplement.

The material facts upon which I based my answer to Interrogatory No. 37 are that Mr. Martin V. B. Coe's marriage with Katherine C. Coe was dissolved by the decree of the Nevada district court; that thereafter Mr. Coe obtained a marriage license under the provisions of the Nevada statute and was remarried in the presence of two witnesses by a Judge of the district court, at which ceremony Mr. and Mrs. Coe declared that they took each other as husband and wife.

To Cross-Interrogatory No. 6 he answered:—

Mr. Martin V. B. Coe informed me that in March, 1942, Mrs. Coe proceeded on a separate support petition in Massachusetts and that she was awarded a decree justifying her in living apart for justifiable cause. I believe that Mr. Coe told me that the ground was not specified.

As stated in my answer to Direct Interrogatory No. 9b, it was our intention to rely upon the act of cruelty occurring after this date and upon the ground occurring in the State of New York.

To Cross-Interrogatory No. 7 he answered:—

The question of residence is one of fact and was determined by the trial court from which decision no appeal was taken. See *Blakeslee v. Blakeslee*, 41 Nev. 235, and cases cited therein.

To Cross-Interrogatory No. 8 he answered:—

Whether fraud was committed on the court or not whereby a decree of divorce was obtained is a question for the determination of the trial court. No motion to set aside the final decree of the Nevada court was made within the statutory time and a final decree is, under our law, valid and binding until set aside and reversed.

To Cross-Interrogatory No. 9 he answered:—

The plea of res adjudicata to be available as a defense to Mr. Coe's action in Nevada should have been specifically set up and pleaded. In any event, as indicated in my answer to Direct Interrogatory No. 9b and to Cross-Interrogatory No. 6, it was the intention of Mr. Coe to rely on an incident occurring after the entry of the Massachusetts order, and even if the Massachusetts order had been specifically pleaded, in my opinion an adequate plea of res adjudicata would not have been raised.

To Cross-Interrogatory No. 10 he answered:—

Under the section of the Nevada law permitting the bringing of actions for divorce, a divorce may be granted in those counties in which the cause thereof has accrued or in which the plaintiff shall have resided six weeks. Plaintiff satisfied the Nevada residential requirement, the court found in his favor on the question of residence and jurisdiction and the decree has not been set aside or reversed. See *Davis v. Davis*, 54 Nev. 267.

To Cross-Interrogatory No. 11 he answered:—

The filing of the cross-complaint in this action was a fact, the allegation in the complaint in regard to residence stand upon the same footing as any other allegation of fact showing the right to divorce. Defendant could have denied the allegation of residence and could have attacked plaintiff's residence in her answer. The Court found that plaintiff was a bona fide resident and it could not be presumed that the Court failed of its duty in regard to the fact pertaining to that issue. See *Confer v. District Court*, 49 Nev. 26.

To Cross-Interrogatory No. 12 he answered:—

The \$7,500.00 was paid before the court hearing. Mr. Coe at no time agreed not to give evidence in opposition to the cross-complaint. After weighing the comparative merits of the case, it was concluded that it would not be necessary to testify in opposition to the testimony given by his wife.

The parties contemplated that the contract would be incorporated in the decree and would become effective and the decree entered by the Court so provided.

There is to my knowledge no statute or court decision requiring domicile as the requisite for passing upon a property settlement contract where the question of divorce or separation is not involved. In any event, as repeatedly mentioned in my preceding answers, the Court specifically found that it had jurisdiction.

In answer to the second paragraph of Cross-Interrogatory No. 12, he answered:—

It is impossible for me to answer this question in the absence of having a definition of "bad faith" or having been given facts indicating such bad faith. An opinion, it seems to me, may be given when hypothetical questions are predicated upon facts established by proof in the case. The question, as far as I know,

assumes facts which do not exist and which have not been proven. In any event, it occurs to me that the contract which Mr. and Mrs. Coe entered into is binding upon them until such time as it is set aside. I do not know of any Nevada decisions or statutes bearing upon this particular question.

ALAN BIBLE

STATE OF NEVADA }
County of Ormsby } ss.

I, JOHN C. KELLY, a Notary Public in and for the County of Storey, State of Nevada, pursuant to the Commission annexed hereto, do hereby certify that I am a disinterested person herein; that said deposition of Alan Bible was taken before me at Carson City, Nevada, on the 11th day of October, 1944, commencing at the hour of 2:30 o'clock P.M. of said day; that the witness, Alan Bible, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth; that thereupon and while said witness was under oath and in pursuance of said Commission, I examined said witness in answer to the Interrogatories and Cross-Interrogatories annexed to said Commission and caused said examination to be reduced to writing; and that when completed said deposition was carefully read to said witness and corrected by him in every particular he desired and was thereupon subscribed by him in my presence; that the foregoing is a correct and true transcript of the evidence and words of said witness, Alan Bible, in answer to said Interrogatories, Cross-Interrogatories and other proceedings, at the taking of said deposition.

IN WITNESS WHEREOF, I have subscribed my hand and affixed my official seal this 13th day of October, 1944.

JOHN C. KELLY,
Notary Public in and for the County of
Storey, State of Nevada, acting in and
for the County of Ormsby.
My Commission Expires January 7, 1945

Filed: October 17, 1944.

STATE OF NEVADA }
County of Ormsby } ss.

Pursuant to the foregoing commission, I caused the said Alan Bible to come before me on the 11th day of October A.D. 1944, and after having sworn the said Alan Bible to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, I

examined the said Alan Bible and reduced his testimony to writing. In taking the deposition I put the interrogatories to the deponent as directed in the foregoing commission, and in all respects, fully and exactly complied with the directions in said commission. And after said deposition was taken, I carefully read the same to the said Alan Bible and he subscribed it in my presence.

JOHN C. KELLY,
My Commission Expires January 7, 1945.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF NEVADA

IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. COE, Plaintiff,

VS.

KATHERINE C. COE, Defendant.

I, MARIETTA LEGATE, County Clerk and ex-officio Clerk of the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, do hereby certify that I have compared the foregoing with the original thereof, and that I am the keeper of all said original, keeping same on file in my office as the legal custodian, and keeper of the same under the laws of the State of Nevada, and I further certify that the foregoing copies, attached hereto are full, true and correct copies of the COMPLAINT, AFFIDAVIT FOR PUBLICATION OF SUMMONS, ORDER FOR PUBLICATION OF SUMMONS, DEMURRER, REPLY, ANSWER AND CROSS-COMPLAINT, AGREEMENT, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, AND TRANSCRIPT OF PROCEEDINGS, in the action entitled:

MARTIN V. B. COE,

Plaintiff,

VS.

KATHERINE C. COE,

Defendant.

and now on file and of record in my office.

I do further certify that the same has not been altered, amended or set aside, but is still of full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 27th day October, A. D., 1942.

MARIETTA LEGATE,
County Clerk.

[SEAL]

I, CLARK J. GUILD, the Presiding Judge of the First Judicial Court of the State of Nevada, in and for the county of Ormsby, do hereby certify that said Court is a Court of Record, having a Clerk and a Seal; that MARIETTA LEGATE, who has signed the annexed attestation, is the duly elected and qualified County Clerk of the County of Ormsby and was at the time of signing of said attestation, ex-officio Clerk of said Court.

That said signature is her genuine handwriting and that all of her official acts as such Clerk are entitled to full faith and credit.

And I further certify that attestation is in due form of law.

WITNESS my hand this 27th day of October, A. D., 1942.

CLARK J. GUILD,

The Presiding Judge of the First Judicial District Court of the State of Nevada, in and for the County of Ormsby.

STATE OF NEVADA, }
County of Ormsby. } ss.

I, MARIETTA LEGATE, County Clerk and ex-officio Clerk of the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, do hereby certify that Honorable CLARK J. GUILD, whose name is subscribed to the preceding Certificate, is the Presiding Judge of said Court, duly elected and qualified, and that the signature of said Judge to said Certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 27th day of October, A. D., 1942.

MARIETTA LEGATE,
County Clerk and ex-officio Clerk of the First Judicial District Court of the State of Nevada, in and for the County of Ormsby.

[SEAL]

Filed: October 23rd, 1942.

No. 10,989

MARIETTA LEGATE, Clerk.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

TRANSCRIPT
OF PROCEEDINGS.

BE IT REMEMBERED, that the above-entitled action came on regularly for hearing on Saturday, September 19th, 1942, at the hour of 11 o'clock A.M., before Honorable Clark J. Guild, District Judge.

The plaintiff was present in Court, and was represented by his attorney, Alan Bible.

The defendant was present in Court, and was represented by her attorney, H. W. Edwards of Withers and Edwards.

WHEREUPON, the following proceedings were had and testimony given:

COURT: We will come to order, folks. This action 10,989, Martin V. B. Coe vs. Katherine C. Coe. Issue is joined on the pleadings. There is an Answer and Cross-Complaint to plaintiff's Complaint which has been duly verified. Alan Bible for the plaintiff in the action; Withers and Edwards for the defendant. At the request of counsel, enter the order setting the action for trial forthwith.

MR. BIBLE: I ask that the witnesses be sworn.

(Hazel Reed and Nancy Sauer, witnesses, Martin V. B. Coe, the plaintiff, and Katherine C. Coe, the defendant, after being first duly sworn, testified as follows:)

MR. BIBLE: Will you take the stand, Mrs. Reed, please?

(Hazel Reed, a witness, takes stand.)

DIRECT EXAMINATION

By ALAN BIBLE.

Q. You may state your name.

A. Mrs. Hazel Reed.

COURT: How do you spell the last name?

A. R-e-e-d.

MR. BIBLE: (Q) Where do you reside, Mrs. Reed?

A. At 1043 Manor Drive, Reno.

Q. That is in the State of Nevada, is it? A. Yes.

Q. And are you acquainted with the plaintiff in this action, Martin

V. B. Coe? A. I am.

Q. When did you first see him?

A. I saw him for the first time on the 11th of June, 1942.

COURT: I didn't get the date.

A. June 11th, 1942.

MR. BIBLE: (Q.) Did you see him again on June 12th, 1942.

A. I did.

Q. And how much of the time since then have you seen him?

A. I would say once or twice a week since that time.

Q. You are employed in Reno as a secretary, are you?

A. Yes, in a law office.

Q. And you saw him in that capacity? A. I did.

Q. In the law office? A. Yes.

MR. BIBLE: You may cross-examine.

MR. EDWARDS: I have no questions.

COURT: You may be excused.

MR. BIBLE: Mrs. Sauer, Please.

(Nancy Sauer, a witness, takes stand.)

DIRECT EXAMINATION

By Alan Bible.

Q. You may state your name.

A. Nancy Sauer.

Q. And where do you reside, Mrs. Sauer?

A. At the Del Monte Ranch, Carson Highway, Washoe County, Nevada.

Q. And you have resided there for a number of years? A. Yes.

Q. Are you acquainted with the plaintiff in this action, Martin V. B. Coe? A. Yes, I am.

Q. When did you first see Mr. Coe in Washoe County, Nevada?

A. On June 13th, 1942, up to and including July 24th, 1942, did you see him practically every day? A. Yes, I did.

Q. And now after July 24th, 1942, has he continued to reside at the Del Monte Ranch in Washoe County, Nevada? A. Yes, he has.

Q. And have you seen him most of the time since then? A. Yes.

Q. Has he been absent from the ranch for a very long period of time?

A. No, just a few days at a time.

Q. He has spent practically all of the time since July 24th, 1942, at your ranch? A. Yes, he has.

MR. BIBLE: That is all. You may cross-examine.

MR. EDWARDS: We have no questions.

COURT: You may be excused.

MR. BIBLE: That is all, Mrs. Sauer. You may be excused. Mr. Coe, will you take the stand, please? Just be seated on the witness chair.

(Martin V. B. Coe, the plaintiff, takes stand.)

DIRECT EXAMINATION

By ALAN BIBLE

MR. BIBLE: Mr. Coe is very difficult of hearing and I will talk a little loud. (Q.) You may state your name.

A. Martin V. B. Coe.

Q. And are you a resident of Washoe County, Nevada? A. I am.

Q. When did you first come to Washoe County, Nevada?

A. On June 10th.

Q. And is that this year? Is that 1942? A. Nineteen forty-two.

Q. And where did you first stay when you came to Reno, Washoe County, Nevada, on June 10th?

A. El Cortez Hotel.

Q. How many days did you stay at the El Cortez Hotel?

A. Two or three days.

Q. On June 13th, 1942, did you move to the Del Monte Ranch in Washoe County, Nevada? A. I did.

Q. Have you been a resident there ever since that time? A. I have.

Q. Up to the time on which you filed your Complaint on July 24th, 1942, were you at the Del Monte Ranch, Washoe County, Nevada, each and every day? A. I was.

COURT: Pardon. That is July 27th.

MR. BIBLE: (Q.) July 27th, the day on which you filed your Complaint? A. Yes.

Q. And as I understand you verified that Complaint on July 24th and up to the day on which you verified your Complaint and the day on which you filed it, July 27th, were you in Nevada each and every day?

A. Yes, every day.

Q. After July 27th, 1942, how much of the time have you spent within the State of Nevada?

A. Well, I spent four days in Los Angeles with my daughter and four days in Carson City, and six days at Lake Tahoe.

Q. With the exception of that time, have you been in Washoe County, Nevada, each and every day since June 10th, 1942? A. Yes.

Q. When you came to this State, did you do so with the intention of making this State your home? A. I did.

Q. Does that intention still abide with you? A. It does.

Q. Have you opened a bank account in this State? A. Yes.

Q. And where? A. First National Bank of Nevada.

Q. And where is that located, sir?

A. Located on North Virginia and Second Street.

Q. That is at Reno, Nevada, is it? A. Reno, Nevada.

Q. Have you a safety deposit box in the State of Nevada? A. I have.

Q. Have you opened up a post office box in the State of Nevada?

A. Yes.

Q. And where? A. At the post office.

Q. Have you taken out Nevada plates for your automobiles?

A. I have.

Q. Have you taken out a Nevada driver's license? A. I have.

MR. BIBLE: You may cross-examine.

MR. EDWARDS: I have no questions.

COURT: You may step down.

MR. BIBLE: That is all, Mr. Coe. You may be excused.

MR. EDWARDS: Mrs. Coe, will you take the witness stand, please?

(Katherine C. Coe, the defendant, takes stand.)

DIRECT EXAMINATION

By H. W. EDWARDS.

Q. Your name is Katherine C. Coe? A. Yes.

Q. And where do you reside, Mrs. Coe? A. 128 Liberty Street, Reno.

Q. You have read your Cross-Complaint filed in this action, have you?

A. Yes, sir.

Q. You allege therein that during the marriage your husband has treated you in an extremely cruel manner. Is that true? A. Yes.

Q. I will ask you if he ever struck you, Mrs. Coe, and threw some dishes or other implements at you? A. On one occasion he did, yes.

Q. Did he ever take hold of you and twist your arms on a number of occasions? A. Yes, several times.

Q. State whether or not he was ever courteous or discourteous and rude to you before and in the presence of your friends and acquaintances?

A. Yes, he has been rude to me and discourteous.

Q. He has left you alone on very and many occasions in the last two or three years of your marriage, has he not? A. Yes, he has.

Q. Your husband is interested in another woman, is he not? A. Yes.

Q. And you became advised of that, did you not, Mrs. Coe? A. Yes.

Q. Did he leave you and go to New York City on a number of occasions? A. Yes, he took an apartment there and didn't tell me.

Q. Did he ever tell you to get out; leave your residence, that he didn't like—didn't want you; didn't love you any more? A. Yes.

Q. And you have seen him purchase articles of wearing apparel and of jewelry for this other person, have you not? A. Yes, I have.

Q. Now, this conduct on your husband's part disturbed your peace of mind?

A. Yes, it did. I wasn't able to sleep or eat—unset me tremendously.

Q. Made you unhappy? A. Yes, it did.

Q. How has it affected you physically?

A. Why, I lost weight. I couldn't sleep and I couldn't eat.

Q. You have a rather tough time for the last three weeks, have you not, Mrs. Coe? A. Yes.

Q. I don't suppose there is any chance for you and your husband to be reconciled again? A. I think not.

MR. EDWARDS: That is all, if your Honor please.

THE COURT: We didn't get the marriage, children and the property.

MR. EDWARDS: I beg your pardon. (Q.) You and your husband have entered into a written agreement settling your property rights? A. Yes.

Q. I offer you a copy of that agreement. Is that the document in question? A. Yes.

Q. You ask the Court to adopt and approve and ratify this agreement?

A. Yes, I do.

MR. EDWARDS: I offer a copy in evidence.

MR. BIBLE: I have no objections.

COURT: It may be received in evidence and marked "Defendant's Exhibit 1".

MR. EDWARDS: (Q.) When and where were you married?

A. New York City, New York, May 16th, 1934.

Q. You ever since have been husband and wife, have you? A. Yes.

Q. There are no children the issue of the marriage, are there, Mrs. Coe? A. No.

COURT: That was at New York City? A. Yes, sir.

MR. EDWARDS: That is all.

COURT: Defendant's case?

MR. EDWARDS: Defendant has nothing further to offer, your Honor.

COURT: You may be excused.

MR. BIBLE: Plaintiff rests, if the Court please.

COURT: Enter the decree of the Court to the defendant upon the Cross-Complaint on the ground of cruelty of the plaintiff toward her. The agreement entered into between the respective parties will be ratified, approved and adopted by the Court.

MR. BIBLE: Plaintiff waives the statutory time for the signing of Findings of Fact and Conclusions of Law and Decree.

MR. EDWARDS: May we have the agreement sealed, if your Honor please?

COURT: You may enter the order sealing the record.

STATE OF NEVADA, }
County of Ormsby. } ss.

I, CLEMENTINE WESTOVER, Court Reporter Pro tem, of the First Judicial District Court of the State of Nevada, in and for Ormsby, Douglas, Storey, Lyon and Churchill Counties, do hereby certify that I was present in Court during all the proceedings had and testimony given in the case of Martin V. B. Coe, plaintiff, vs. Katherine C. Coe, defendant, heard at Carson City, Nevada, on September 19th, 1942, and took verbatim stenotype notes thereof, and that the foregoing ten pages contain a full, true and correct transcription of my stenotype notes so taken, and full, true and correct copy of all proceedings had and testimony given.

CLEMENTINE WESTOVER,
Court Reporter Pro Tem.

No. 10989

WITHERS AND EDWARDS,
Attorneys for Defendant.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

FILED

Sep. 19, 1942

MARIETTA LEGATE

Clerk

By T
Deputy.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This action having been regularly set for trial, was heard this 19th day of September, 1942, before the undersigned Judge of the above entitled Court, sitting without a jury. The plaintiff appeared in person and by his attorney Alan Bible, Esq., and the defendant appeared in person and by her attorneys, Messrs. Withers and Edwards.

The case was submitted for decision upon the pleadings and evidence, from which the Court FINDS:

That the plaintiff failed to prove, by a preponderance of the evidence, the allegations contained in his complaint filed herein; that the defendant proved and fully established, by a preponderance of the evidence, the allegations set forth in her answer and cross-complaint filed herein; and that the Court has jurisdiction of the plaintiff and defendant and of the subject

matter involved; that on the 16th day of September, 1942, the plaintiff and defendant entered into a written agreement fully and finally settling all property rights existing between them, a copy of which said agreement was duly introduced in evidence.

From the foregoing Findings the Court CONCLUDES:

That the defendant is entitled to judgment against the plaintiff as prayed for by her in her answer and cross-complaint filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant have, and she is hereby awarded, judgment against the plaintiff forever dissolving the contract of marriage and bonds of matrimony now and heretofore existing between them, and restoring both parties to the status of unmarried persons.

IT IS FURTHER ORDERED that the written agreement entered into by the plaintiff and defendant herein on the 16th day of September, 1942, be, and the same is hereby ratified, approved and confirmed, and adopted by the Court as a part of its judgment herein, and each of the parties is hereby ordered and directed to comply with the terms thereof.

DONE IN OPEN COURT at the Court House at Carson City, County of Ormsby, Nevada, this 19th day of September, 1942.

CLARK J. GUILD,
District Judge.

THIS AGREEMENT, made and entered into this 16th day of September, 1942, by and between MARTIN V. B. COE, hereinafter called the first party, and KATHERINE C. COE, hereinafter called the second party, both of Reno, Washoe County, Nevada.

Received in Evidence and marked Dft's Exhibit "1"

Filed Sept. 17, 1942.

MARIETTA LEGATE, Clerk,
By: EMMA MILLER, Deputy.

WITNESSETH:

WHEREAS, the parties hereto are husband and wife, and are now separated and living apart because of unfortunate and unhappy differences which have arisen between them, and

500

WHEREAS, each of the parties is desirous of entering into an agreement fully and finally settling all property rights of every nature whatsoever existing between them,

NOW, THEREFORE, in consideration of the premises and of their mutual covenants and agreements hereinafter contained, and of the sum of One Dollar (\$1.00) by each of the parties to the other in hand paid, and the receipt whereof is hereby acknowledged, the parties hereto do agree as follows, to-wit

1. The parties hereto mutually agree each to and with the other that they will from henceforth maintain their separate residence and domicile, each one to so comport himself or herself as to interfere in no wise or respect with the life of the other, or with the conduct of the other, other wise than as hereinafter provided.

2. The first party shall pay to the second party upon the execution of this agreement, the sum of SEVENTY-FIVE HUNDRED DOLLARS (\$7500.00), the receipt whereof is hereby acknowledged.

The first party shall also pay to the second party the Sum of EIGHTEEN HUNDRED TWENTY DOLLARS (\$1820.00) per year in equal weekly instalments of THIRTY-FIVE DOLLARS (\$35.00) on the first day of each and every week from and after the date hereof, during the life of the second party provided she remains unmarried; and in the event of the second party remarrying, then the amount so to be paid to her by the first party shall cease and terminate from and after a period of five (5) years from the date of these presents.

The obligation to make weekly payments as provided for hereunder shall continue only during the lifetime of the first party and shall not in any way be construed as an obligation against his estate.

Weekly instalments shall be mailed to the second party at 32 Howland Terrace, Worcester, Massachusetts, unless the second party otherwise notifies the first party of a change in address.

3. The first party does hereby waive, release, surrender and forever relinquish to the second party, her heirs executors or administrators, all his right, title and interest as husband, as tenant by the courtesy, under the intestate laws or otherwise whatsoever, in and to any property, real or personal, which the second party now has or may be in anywise entitled to or may hereafter acquire, to the end that she may acquire, possess, enjoy, convey, devise and bequeath the same with the same effect as if she

were a femme sole; and the first party further covenants and agrees that he shall and will not at any time hereafter claim or demand in any manner whatsoever the whole or any interest whatsoever in any real or personal estate which the second party now owns or which she may hereafter in any manner acquire. The first party further agrees that in the event of the death of the second party he will not claim or take against her will and that at any time when requested by the second party or by her counsel, or by counsel for the estate of the second party, he will execute, acknowledge and deliver any deeds, instruments or release necessary to carry into full effect the provisions of this paragraph of this agreement.

4. The second party does hereby waive, release, surrender and forever relinquish to the first party, his heirs, executors or administrators, all her right, title and interest as wife, by way of dower, under the intestate laws or otherwise whatsoever, in and to any property, real or personal, which the first party now has, or which he may in anywise acquire or be entitled to, or may hereafter acquire, to the end that he may acquire, possess, enjoy, convey, devise and bequeath the same with the same effect as if he had never been married to the second party; and the second party further covenants and agrees that she shall and will not at any time hereafter claim or demand in any manner whatsoever the whole or any interest whatsoever in any real or personal estate which the first party now owns or which he may hereafter in any manner acquire, so long as the first party complies with all the terms of this agreement. The second party further agrees that in the event of the death of the first party she will not claim or take against his Will and that, at any time when requested by the first party or by his counsel, or by counsel for the estate of the first party, she will execute, acknowledge and deliver any deeds, instruments or releases necessary to carry into full effect the provisions of this paragraph of this agreement.

5. The second party further hereby waives, releases, surrenders and forever relinquishes to the first party, his heirs, executors or administrators, all right to any future support and maintenance for herself and all liability of the first party therefor from and after the date hereof and during her lifetime, save and except as herein provided.

6. It is the true intent and purpose of this agreement that the first party shall have no interest or claim whatsoever against the second party

or her estate, and the second party shall have no interest or claim against the first party or his estate save and except as herein provided, and that each of the parties hereto shall acquire, possess, enjoy, convey, devise and bequeath any and all property hereafter owned by them, or either of them, as though he or she had never been married.

7. All of the covenants herein contained shall remain in full force and effect whether the parties shall resume the material relation and live together as man and wife, whether as now they live separate and apart, or whether either of the parties hereto be granted a decree of divorce, regardless of where such decree shall be obtained or upon what grounds the same shall be based; and in the event of such decree of divorce the terms of this agreement shall be presented to the court with the request that the same be ratified, approved and confirmed by the court.

IN WITNESS WHEREOF THE parties hereto have hereunto set their hands the day and year first hereinabove written.

MARTIN V. B. COE,
First Party,

KATHERINE C. COE,
Second Party.

STATE OF NEVADA, }
County of Ormsby } ss.

On this 19th day of September, 1942, personally appeared before me, the undersigned Notary Public, MARTIN V. B. COE, known to me to be the person who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this Certificate first above written.

[SEAL]

C. V. MELARKEY,
Notary Public, Ormsby County, Nevada.

STATE OF NEVADA, }
County of Washoe } ss.

On this 19th day of September, 1942, personally appeared before me, the undersigned Notary Public, KATHERINE C. COE, known to me to be the person who executed the foregoing instrument, who acknowledged to me that she executed the same, freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this Certificate first above written.

KATHRYN M. FOULKES,
Notary Public, Washoe County, Nevada.

[SEAL]

No. 10989

- WITHERS AND EDWARDS,
Attorneys for Defendant.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY.

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

FILED

Sep. 19, 1942.

MARIETTA LEGATE
Clerk,

By
Deputy.

ANSWER AND CROSS-COMPLAINT

Comes now the defendant above named and in answer to the plaintiff's complaint filed herein, admits, denies and in answer to the plaintiff's complaint filed herein, admits, denies and alleges:

I.

Answering paragraphs I, II, III and IV of the first cause of action contained in said complaint, defendant admits the same and all and singular the allegations therein contained.

II.

Answering paragraph V of said first cause of action contained in said complaint, defendant denies the same and each and every the allegations therein contained.

III.

Answering paragraph I of the second cause of action contained in said complaint, defendant admits the same and all and singular the allegations therein contained.

IV.

Answering paragraph II of said second cause of action, defendant denies the same and each and every the allegations therein contained.

PAINTER, WITHERS AND EDWARDS,
Stack Building,
Reno, Nevada.

AND FOR A FURTHER DEFENSE, AND BY WAY OF CROSS-COMPLAINT, defendant alleges;

I.

That at the time of the filing of the plaintiff's complaint herein, the plaintiff could be found within the state of Nevada, and that the plaintiff can still be found within said State of Nevada.

II.

That the plaintiff and defendant intermarried at New York City, New York, on or about the 16th day of May, 1934, and ever since said date have been, and now are, husband and wife.

III.

That there was no child the issue of said marriage.

IV.

That the plaintiff and defendant, on the 16th day of September, 1942, entered into a written agreement fully and finally settling all property rights of every nature between them, which said agreement the defendant believes to be fair and equitable.

V.

That since the marriage of the plaintiff and defendant as aforesaid, plaintiff has treated the defendant with extreme cruelty.

WHEREFORE, defendant prays for judgment against the said plaintiff, forever dissolving the contract of marriage and bonds of matrimony now and heretofore existing between them, and restoring both parties to the status of unmarried persons; and that the written agreement entered into by the plaintiff and defendant on the said 16th day of September, 1942, be ratified, approved and confirmed, and adopted by the Court as a part of its judgment herein.

WITHERS AND EDWARDS,

By H. W. EDWARDS,

Attorneys for Defendant.

STATE OF NEVADA, }
County of Washoe, } ss.

KATHERINE C. COE, being first duly sworn on her oath, says:

That she is the defendant in the above entitled action; that she has read the foregoing Answer and Cross-Complaint and knows the contents thereof; that the same is true of her own knowledge except as to the mat-

ters and things therein stated on information and belief, and as to those matters she believes it to be true.

KATHERINE C. COE.

Subscribed and Sworn to before me
this 17th day of September, 1942.

KATHRYN M. FOULKES,
Notary Public in and for the
County of Washoe, State of Nevada.

[SEAL]

PAINTER, WITHERS AND EDWARDS,
Stack Building,
Reno, Nevada.

No. 10989

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,
Plaintiff,
vs.
KATHERINE C. COE,
Defendant.

FILED
Sep. 19, 1942
MARIETTA LEGATE
Clerk,
By Deputy.

REPLY

COMES NOW the plaintiff above named and in answer to the defendant's
ansanswer and cross-complaint filed herein, admits, denies and alleges:

I.

The plaintiff admits the allegations of paragraphs I, II, II, and IV of
defendant's cross-complaint.

II.

Plaintiff denies the allegations of paragraph V of defendant's cross-
complaint.

WHEREFORE, plaintiff prays for judgment against the said defendant,
forever dissolving the contract of marriage and bonds of matrimony now
and heretofore existing between them, and restoring both parties to the
status of unmarried persons; and that the written agreement entered into
by the plaintiff and defendant on the said . . . day of September, 1942,

be ratified, approved and confirmed, and adopted by the Court as a part of its judgment herein.

ALAN BIBLE,
Attorney for Plaintiff.

Verification of the foregoing Reply is hereby waived, and Service by copy is admitted this 19th day of September, 1942.

H. W. EDWARDS,
Attorney for Defendant.

No. 10989

WITHERS AND EDWARDS,
Attorneys for Defendant.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,
Plaintiff,
vs.
KATHERINE C. COE,
Defendant.

FILED
Aug. 28, 1942.
MARIETTA LEGATE
Clerk,
By
Deputy.

DEMURRER

Comes now the defendant above named and demurs to the plaintiff's complaint filed herein on the grounds following:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant prays that the plaintiff take nothing by his complaint filed herein and that the same be dismissed; and that the defendant may go hence with her costs and without a day.

WITHERS AND EDWARDS,
By H. W. EDWARDS,
Attorney for Defendant.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

No. 10989

FILED

Jul. 27, 1942

MARIETTA LEGATE,

Clerk,

By EMMA MILLER,

Deputy

ORDER FOR PUBLICATION OF SUMMONS

Upon reading the affidavit of plaintiff duly filed herein, it appears to the satisfaction of the Court, and the Court finds, that defendant herein resides outside of the State of Nevada, that defendant cannot be found within the state of Nevada, and that summons herein cannot be served upon defendant in person within the State of Nevada; and it appearing from said affidavit and from the verified complaint filed herein, and the Court here finds, that a cause of action exists in favor of plaintiff and against defendant, that defendant is a necessary and proper party herein, and that the residence and address of defendant are

32 Howland Terrace, Worcester, Massachusetts.

and it further appearing that the Carson City Chronicle is a newspaper published in the City of Carson, Ormsby County, State of Nevada, and is the newspaper most likely to give notice to defendant of the pendency of this suit;

Now, THEREFORE, it is hereby ordered that summons in this suit be served on defendant herein, by publication thereof in the above-named newspaper, and that said publication be made for a period of four weeks and at least once a week during said time;

It is further ordered and directed that a copy of the summons and a certified copy of the complaint be deposited forthwith in the United States Post Office at Carson City, Nevada, enclosed in an envelope upon which the postage is fully prepaid, addressed to defendant at

32 Howland Terrace, Worcester, Massachusetts.

It is further ordered that due service of a copy of the summons and a certified copy of the complaint on defendant in person outside the State of Nevada shall be equivalent to complete service by publication and deposit

in the united States Post Office, and that such process may be served upon defendant as prescribed by Statute.

DONE IN OPEN COURT, July 27th, 1942.

CLARK J. GUILD,
District Judge.

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

No. 10989

FILED

Jul. 27, 1942

MARIETTA LEGATE,

Clerk,

By EMMA MILLER,

Deputy.

AFFIDAVIT FOR PUBLICATION OF SUMMONS

COUNTY OF ORMSBY, } ss.
STATE OF NEVADA

MARTIN V. B. COE, being first duly sworn, deposes and says: That inaffiant is the plaintiff named in the suit entitled above; that said suit has been commenced by the filing of a verified complaint and the issuance of summons thereon; that said suit is brought to obtain a decree of divorce by plaintiff from defendant, and that a good cause of action exists therefor in favor of plaintiff and against defendant as follows:

That plaintiff now is an actual and bona fide resident and domiciled within Washoe County, Nevada, and that said plaintiff, for a period of more than six weeks, preceding the filing of complaint herein, has been an actual and bona fide resident of and domiciled within the State of Nevada; that plaintiff and defendant were married to each other at New York City, New York, on May 16, 1934, and ever since have been and now are wife and husband; that although during the married life of plaintiff and defendant, plaintiff's conduct was in accordance with the marital duties, defendant treated plaintiff with extreme cruelty and willfully deserted him.

all in form and manner specifically alleged in the complaint filed herein, reference to which hereby expressly is made.

That defendant is a necessary and proper party defendant in this suit;

that summons cannot be served on defendant in person within the State of Nevada; that defendant is not now in and cannot be found in the State of Nevada; and that defendant's present residence and address are:

32 Howland Terrace, Worcester, Massachusetts.

WHEREFORE, affiant prays for an order of Court directing that service of process be made herein on defendant by the publication of summons in some newspaper designated as most likely to give notice to defendant of the pendency of this suit, and by mailing to defendant, at said last known address, certified copies of complaint and summons, all in manner and form required by law, and further directing that personal service of process, in due form, upon defendant outside the State of Nevada, be equivalent to complete service by publication and mailing; and for all proper relief in the premises.

MARTIN V. B. COE.

Subscribed and sworn to before me this 24 day of July, 1942.

[SEAL]

C. V. MELARKEY,
Notary Public, Ormsby County, Nevada.

No. 10989

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ORMSBY

MARTIN V. B. COE,

Plaintiff,

vs.

KATHERINE C. COE,

Defendant.

FILED

Jul. 27, 1942

MARIETTA LEGATE,
Clerk,

By EMMA MILLER,
Deputy.

COMPLAINT

COMES NOW the plaintiff and for a cause of action against said defendant complains and alleges as follows, to wit:

I.

That plaintiff for more than six weeks last past and immediately preceding the filing of this complaint has been continuously and now is, a bona fide resident of, and during all of said period of time, has had and now has his residence within the State of Nevada, and has been physically, corporally and actually present in said State during all of the aforesaid period of time.

II.

That plaintiff and defendant intermarried at New York City, New York, on or about the 16th day of May, 1934, and ever since that time have been, and now are, husband and wife.

III.

That there are no children the issue of said marriage.

IV.

That there is no community property belonging to the plaintiff and defendant herein to be divided by the court between them.

V.

That the defendant since the marriage has treated the plaintiff with extreme cruelty. That all of the acts of extreme cruelty on the part of the defendant were without cause or provocation, and caused the said plaintiff intense mental pain, anguish and suffering and seriously interfered with and impaired his health.

And for a further, separate and second cause of action against defendant, the plaintiff alleges:

I.

That the plaintiff herein realleges and reasserts all and singular the allegations of paragraph No. I, II, III, IV of his first cause of action alleged herein, and makes the same a part hereof as specifically as if here set out in full.

II.

That said defendant wife without cause or provocation on the part of the plaintiff husband willfully deserted said plaintiff husband for a period of more than one year or since on or about 26 day of October 1939, and the said parties have lived separate and apart without co-habitation since that time.

WHEREFORE, plaintiff prays judgment and decree of this Court as follows, to wit:

1. That the bonds of matrimony now and heretofore existing between the plaintiff and the defendant be forever dissolved.
2. For such other, further and additional relief as shall appear to this Court meet and proper in the premises.

s/ALAN BIBLE,
Attorney for Plaintiff.

STATE OF NEVADA, }
COUNTY OF ORMSBY } ss.

MARTIN V. B. COE, Being first duly sworn, deposes and says:

That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters he believes it to be true.

MARTIN V. B. COE,
Plaintiff.

[SEAL]

Subscribed and sworn to before
me this 24 day of July, 1942.

C. V. MELARKEY,
Notary Public.

Filed October 15, 1943.

MEMORANDUM

RE: COE VS. COE

I am submitting herewith some material which you may find to be helpful to you in connection with the divorce proceedings contemplated by Martin V. B. Coe.

Mr. Coe has been afflicted with deafness from an early age. He does come of people who were quite well off and was fortunate in receiving a fairly substantial inheritance. This affliction has prevented him from engaging in the usual and ordinary business pursuits and he derives his income from investments in stocks, bonds and securities. This income has of course varied, but in the past three years has average grossly around \$10,000 annually.

He married Mrs. Katherine C. Coe on May 16, 1934 in New York City. This marriage followed a trip to California which they both made together. They moved into a home which Mr. Coe had occupied prior to the marriage located in Worcester, Massachusetts. They are of different religious faiths, she being Catholic and he being Protestant. At the time of her marriage Mrs. Coe was a salesgirl employed in one of Worcester's large department stores. It is interesting to observe that the marriage took place shortly after Mr. Coe came into the substantial part of his inheritance.

Immediately after the marriage Mrs. Coe insisted on the use of separate bedrooms, discouraged Mr. Coe's friends from coming into the house, refrained from inviting her friends into the house, refused to participate in any of his interests, such as golfing, horseback riding, photography and other hobbies of Mr. Coe, refused to prepare meals and set about living an independent life spending most of her time away from the huose supposedly staying with her family.

Quarrels were frequent because of this situation and accentuated by Mrs. Coes demands for money and particularly for the establishment for her of a separate fund.

In the latter part of 1938 Mr. Coe began treatment in New York City for his deafness and because of conditions at home and because of the frequent treatments required established a residence there and with exceptions of week ends spent most of his time there. He really had no home in Worcester in the sense that the word is ordinarily used. There was nothing that Mrs. Coe did to make the place attractive or provide an incentive for him to return.

In 1939 relations between the two began to become strained to the point where on occasions they were accompanied by acts of physical violence on the part of Mrs. Coe.

On January 13, 1941 Mrs. Coe having failed in all other efforts to obtain an outrageous cash settlement instituted proceedings for separate support. Under our law the grounds for separate support does not require the proof required in divorce proceedings and the original petition charged desertion and cruel and abusive treatment.

On March 6, 1941 Mrs. Coe, altho still living in their matrimonial home and altho having charge accounts which would have supplied all her needs and altho she received in addition a weekly cash allowance, obtained a hearing for temporary support in consequence of which she was allowed \$50.00 per week. This order was predicated largely on the fact that the case on its merits was on the list but two weeks.

Various subterfuges were resorted to by Mrs. Coe's counsel to obtain continuances and amongst other things a libel for divorce was filed alleging cruelty. Following this there was filed on behalf of Mr. Coe, a divorce libel alleging cruelty. Later, amendments were filed to all proceedings alleging adultery.

All petitions finally came on to be heard the early part of March, 1942. Mrs. Coe withdrew her libel for divorce and proceeded in her separate support petition alone, which petition was heard together with Mr. Coe's application for a divorce. Of course, Mr. Coe because of his impediment made a poor witness and some rather fatal admissions altho I have my serious doubts as to whether he heard most of the questions that were asked of him. These actions were heard for a period of about eight days in the course of which it was conclusively demonstrated that Mrs. Coe's sole interest in the marriage was monetary and that the proceedings she instituted were but another means to enrich herself. Indeed, altho many previous offers were made to her to induce her to proceed with an uncontested divorce to run in her favor she flatly rejected all such overtures unless the financial settlement would approximate one third of her husband's estate.

Not only did Mr. Coe make a poor witness because of his impediment but it was impossible to produce any corroborating testimony with the result that Mrs. Coe was awarded a decree justifying her in living apart for justifiable cause, altho the ground is not specified and an award for her separate maintenance made in the sum of \$35.00 weekly. She has taken an appeal to the Massachusetts Supreme Judicial Court on the grounds of the inadequacy of the award which appeal is still pending, and which appeal is not very disturbing as the prospects for reversal or modification appear rather remote. The findings by the court are attached hereto and substantiate the complete incompatibility and the absence of a wholesome marital relation between these parties.

I have been advised that since the entry of the decree in the separate support action Mrs. Coe went to her husband's apartment in New York and upon being refused admission made threats against Mr. Coe's personal safety. This seems entirely credible since she has developed an obsession with respect to obtaining her husband's estate that is hardly normal. She has been known to watch her husband's home for days on end during the past few years and devotes her time to following him around wherever he goes.

I point out this New York incident for the reason that I would prefer to have the divorce in Nevada if possible granted for a cause which arose outside the Commonwealth of Massachusetts. Gen. Laws Chap. 208, Sec. 39 provides as follows:

"A divorce decree in another jurisdiction according to the law thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this Commonwealth; but if an inhabitant of this Commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth."

It would seem that under this statute, if the decree is based on cruelty for a cause not arising in this jurisdiction then that fact coupled with the residence of Mr. Coo in New York would operate to render the Nevada decree valid even in this Commonwealth.

THE COMMONWEALTH OF MASSACHUSETTS

February 16, 1945.

TO WHOM IT MAY CONCERN:

I hereby certify that the records of this office show that Tarbox Realty Corporation was incorporated under the general laws of this Commonwealth May 2, 1941, and I also certify that so far as appears of record in this office, said corporation still has a legal existence. I further certify that on the last-named date a certificate of incorporation was issued to said corporation, a copy of which is on record in this office.

[SEAL]

IN TESTIMONY of which, I have hereunto affixed the Great Seal of the Commonwealth on the date first above written.

F. W. COOK,
Secretary of the Commonwealth.

FIRST NATIONAL BANK OF NEW YORK

NEW YORK, N. Y. September 18, 1938

Pay to the order of Mr. J. J. Jones \$ 3,500.00

THREE THOUSAND FIVE HUNDRED DOLLARS

[Signature]

Guaranty Trust Company of New York

NEW YORK, N. Y. September 18, 1938

Pay to the order of Mr. J. J. Jones \$ 4,000.00

FOUR THOUSAND DOLLARS

[Signature]

FIRST NATIONAL BANK OF NEW YORK

NEW YORK, N. Y. September 18, 1938

Pay to the order of Mr. J. J. Jones \$ 1,000.00

ONE THOUSAND DOLLARS

[Signature]

THE COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

To:

MARTIN V. B. COE,
30 Forest Street,
Worcester, Massachusetts

GREETING:

YOU ARE HEREBY REQUIRED, in the name of The Commonwealth of Massachusetts to appear before the Probate Court holden at Worcester within and for the County of Worcester on the fifth day of February, 1945 at 10 o'clock in the forenoon, and from day to day thereafter, until the action hereinafter named is heard by said Court, to give evidence of what you know relating to an action of Coe v. Coe No. 131205 then and there to be heard and tried between Katherine C. Coe, Plaintiff, and Martin V. B. Coe, Defendant, and you are further required to bring with you all records, including cancelled checks, stubs, receipts and all memoranda relating to your real and personal property and to any other facts that are in relation to those cases.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Dated at Worcester the twentieth day of January A.D. 1945.

FRANCIS P. McKEON,
Notary Public.

WORCESTER, SS.

Worcester, January 20, 1945.

On the above date I summoned the within named Martin V. B. Coe, 30 Forest Street, Worcester, to appear at Court as within directed by leaving at his last and usual place of abode a true and attested copy of the within summons together with \$1.60, the fee for one day's attendance and travel.

Service	\$1.00
Travel	.30
Copy	.50
Auto travel for witness	1.60
	<hr/>
	\$3.40

PRIM J. REEVES,
Special Sheriff.

THE COMMONWEALTH OF MASSACHUSETTS

AGREEMENT OF ASSOCIATION

WE, whose names are hereto subscribed, do, by this agreement, associate ourselves with the intention of forming a corporation under the provisions of chapter 156 of the General Laws.

The name by which the corporation shall be known is Tarbox Realty Corporation.

The location of the principal office of the corporation in Massachusetts is the City of Worcester.

Give business address of the corporation, Room 308, 332 Main Street, Worcester, Mass.

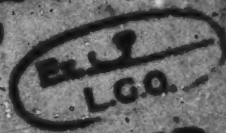
The purposes for which the corporation is formed and the nature of the business to be transacted by it are as follows:—

To acquire, without limit as to amount, in any jurisdiction, but conformably to the laws thereof, by purchase, deed, mortgage, lease, or by any other method, and to dispose of by sale, conveyance, mortgage, or by any other method, personal property of every name, nature and description, and real property, whether improved or unimproved; to develop and operate any and all of such real property, and to this end to build, erect, tear down, and rebuild, operate or sell, hotels, warehouses, office buildings, shops, factories, mills, tenement or other houses, and all contracts necessary in the premises; to issue bonds or mortgages upon any and all of the above-named property, buildings, and structures as security, and dispose of said bonds, or mortgages, and to advance money on, purchase, and sell bonds or mortgages issued on any other property, real or personal; to build, construct, and open for public or private use streets and roads, and build and operate sewers, necessary for the promotion of any of the above named objects, and further to transact on commission the general business of a real estate agent and broker; and to do any and all things incidental to its purposes not prohibited by law. The duration of this corporation is limited to a period of fifty years.

The number of shares without par value is Common—One Hundred.

NOTE—State the restrictions, if any, imposed upon the transfer of shares. If there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and of the method of voting thereon.

W.D. Coe
Box 910,
City.



REGISTERED

RETURN RECEIPT REQUESTED

Mrs. Katharine G. Coe,
32 Highland Terrace,
Worcester, Mass.

71631

Deliver to Addressee Only

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Mrs. Katharine G. Coe.
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Worcester, Mass.



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A stockholder wishing to sell or transfer any of his stock shall first, in writing, offer to sell the same to the Corporation through the Board of Directors disclosing the consideration for the proposed sale or transfer and the name and address of the person to whom it is to be made. The Board of Directors shall have thirty days from the date of such offer to purchase the stock in behalf of the Corporation at the price of the proposed sale or transfer.

NOTE—State any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders—None.

We hereby waive all requirements of the General Laws of Massachusetts for notice of the first meeting for organization, and appoint the 30th day of April, 1941, at 4 o'clock P.M., at the office of Attorney Samuel Perman, 332 Main Street, Worcester, Massachusetts as the time and place for holding said first meeting.

The names and residences of the incorporators and the amount of stock subscribed for by each are as follows:

NAME	CITY or TOWN of RESIDENCE	AMOUNT SUBSCRIBED FOR	
		Preferred	Common
Martin V. B. Coe	6 Boynton Street Worcester, Mass.		98
Samuel Perman	15 Windsor Street Worcester, Mass.		1
Natalie Niedzial	18 Huntington Avenue Worcester, Mass.		1

IN WITNESS WHEREOF, we have hereto signed our names, this 30th day of April in the year nineteen hundred and forty-one.

MARTIN V. B. COE,
SAMUEL PERMAN,
NATALIE NIEDZIAL.

THE COMMONWEALTH OF MASSACHUSETTS

We, MARTIN V. B. COE, President, MARTIN V. B. COE, Treasurer, and SAMUEL PERMAN, Clerk — D. AILEEN COE, being a majority of the directors of the Corporation named below, in compliance with the provisions of chapter 156 of the General Laws, (Ter. Ed.) do hereby state:

1. That the name of the corporation is Tarbox Realty Corporation.
2. That the location of its principal office in Massachusetts is 332 Main St., Worcester and outside Massachusetts none.
3. That the last annual meeting was held on January 19, 1943.
4. That its capital stock of each class authorized and issued on the date fixed in its by-laws for the annual meeting was as follows:

CLASSES OF STOCK	Par Value Per Share	TOTAL AUTHORIZED		TOTAL ISSUED AND OUTSTANDING	
		By Charter or Amendments	Total Par Value	(Including any issued stock held as treasury stock)	
		No. of Shares		No. of Shares	Amount Then Paid Thereon
Preferred			\$		\$
Common	None	100	None	100	1000.00

* If stock is without par value, state "no par".

5. That the date of the end of its last fiscal year (which by section 28, G. L. (Ter. Ed.), must be not more than 90 days prior to the date fixed in the by-laws for the annual meeting) was Dec. 31, 1942 and the statement of the assets and liabilities of the corporation at the end of its last fiscal year is as follows:

ASSETS

LIABILITIES

Cash	\$ 997 00	Accounts payable	\$	
Accounts receivable, customers		Notes and acceptances payable		
Accounts receivable, others				
Notes receivable, customers		Mortgages		
Notes receivable, others		(Specify kind of property mort.)		
Merchandise		Bonds		
Supplies		Reserves (classify below)		
Securities		Notes: Reserves for depreciation or deduction of assets, if not deducted from assets, shall be appropriately described to identify the assets to which they apply.		
(except those issued by this corp.)				
Real Estate				
Machinery				
Motor Vehicles				
Equipment and Tools				
Furniture and Fixtures				
Prepaid insurance, interest, taxes		Capital stock with par value		
Patent rights, trademarks, copyrights				
Good Will		Capital stock without par value		997 00
		No. of shares without par value (100)		
Treasury stock		Surplus		
Profit and loss (deficit)				
TOTAL	\$ 997 00	TOTAL	\$ 997 00	

a. Indicate on what basis any securities owned are stated above ("cost", "market", etc.) None.

b. Did the corporation have any contingent liabilities not reported above? None.

c. What of the above classes of assets, if any, were pledged? None.

d. Did the corporation have investment in, or indebtedness from or to, any company closely affiliated with it? No.

6. That the names and addresses of the officers indicated below and all the directors of the corporation, and the date at which the term of office of each expires, are as follows:—

NAME OF	NAMES	ADDRESSES		Expiration of Term of Office
		(City of Town)	Dwelling: Street and Number	
President	Martin V. B. Coe	6 Boynton St., Worcester	1/1/44	
Treasurer	Martin V. B. Coe	6 Boynton St., Worcester	1/1/44	
Clerk	Samuel Perman	15 Windsor St., Worcester	1/1/44	
	Martin V. B. Coe	6 Boynton St., Worcester	1/1/44	
	D. Aileen Coe	6 Boynton St., Worcester	1/1/44	
Directors	Samuel Perman	15 Windsor St., Worcester	1/1/44	

The President, Treasurer, and majority of Directors should sign in space below.

First names should be written in full.

IN WITNESS WHEREOF, we have hereto signed our names under the penalties of perjury, this 19th day of November in the year nineteen hundred and forty-three.

MARTIN V. B. COE, Pres.-Treas.-Director

D. AILEEN COE

SAMUEL PERMAN

RECEIVED
NOV. 30, 1943
CORPORATION DIVISION
SECRETARY'S OFFICE

DEPARTMENT OF
CORPORATION AND TAXATION
B.
A. NOV. 30, 1943
H.
WITH FEE OF \$10

MASSACHUSETTS CORPORATION

CERTIFICATE OF CONDITION

WRITE NOTHING BELOW

TARBOX REALTY CORPORATION

Fee \$10.00 pd.

GENERAL LAWS, CHAPTER 156, (Ter. Ed.)

SECTION 36. The president, treasurer and directors of every corporation shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof if any stock is issued in violation of section fifteen or sixteen, or if any statement or report required by this chapter is made by them which is false in any material representation and which they know to be false; but directors who vote against such issue, and are recorded as so voting, shall not be so liable, and only the officers signing such statement or report shall be so liable; provided, that if a report of condition as a whole states the condition of the corporation with

substantial accuracy, in accordance with usual methods of keeping accounts, it shall not be deemed to be false; and provided, also, that the officers or directors signing a false report of condition shall be liable only for debts contracted and contracts entered into before the filing of the next subsequent report of condition, and only to persons who shall have relied upon such false report to their damage.

SECTION 47. Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and submit to the commissioner a report of condition which shall be signed and sworn to by its president, treasurer and a majority of its directors.

Filed in the office of the Secretary of the Commonwealth,

DEPARTMENT OF

Nov. 30, 1943.

K.
E. Nov. 29, 1943

I hereby approve the within certificate, this
30th day of November 1943.

T.
CORPORATIONS AND
TAXATION

HENRY F. LONG,
COMMISSIONER OF CORPORATIONS
AND TAXATION.

THE COMMONWEALTH OF MASSACHUSETTS

Office of the Secretary

Boston, February 9, 1945.

[SEAL]

A True Copy.

Witness the Great Seal of the Commonwealth.

F. W. Cook,
Secretary of the Commonwealth.

[fol. 612] SPALDING, J.: This is an aftermath of the case of *Coe v. Coe*, 313 Mass. 232. In that case we affirmed the decree of the probate judge awarding the petitioner \$35 a week for her separate support. The present proceedings are here on an appeal by the petitioner from a decree dismissing her petition to have the respondent adjudged in contempt for failure to make payments as ordered by the decree for separate support. She also appeals from a decree dismissing a petition to modify the original decree and from a decree revoking the same. There were also appeals from various interlocutory matters, but since these were not argued they will be treated as waived. *Commonwealth v. Dyer*, 243 Mass. 472, 508.

Prior to the hearing the respondent filed a plea in bar to the petition for modification in which he alleged, as one of the grounds, that the petitioner was barred from maintaining the petition by reason of a divorce decree of the Nevada court on September 19, 1942.

When the case came on for hearing, an exemplified copy of the court proceedings in Nevada was introduced in evidence and the respondent filed a motion to dismiss, which in substance stated that the Nevada judgment was entitled to full faith and credit and that the petitioner, having obtained a divorce from the respondent in Nevada, cannot now be heard to impeach it by collateral attack. Counsel for the respondent then stated that he did not care to go forward on the plea in bar but wanted to be heard only on the motion to dismiss. The petitioner's counsel insisted that he be given an opportunity to introduce evidence establishing that the parties were never domiciled in Nevada and that its courts had no jurisdiction to grant the divorce. A lengthy colloquy with the judge followed in which the petitioner offered to prove not only that the Nevada court had no jurisdiction but that the divorce was [fol. 613] obtained in violation of G. L. (Ter. Ed.) c. 208, § 39. The judge, subject to the petitioner's exception, ruled that no evidence in support of these matters could be introduced, and the case was then heard without evidence except the exemplified copy of the court proceedings in Nevada, referred to above.

At the conclusion of the hearing the judge entered decrees dismissing the petition to modify and the petition for contempt. At the same time a decree was entered

allowing the respondent's petition to revoke the original separate support decree.

The evidence was reported and there was a report of material facts pursuant to a request under G. L. (Ter. Ed.) c. 215, § 11. The judge in said report stated that he entered the decrees above referred to "on the grounds that the parties are no longer husband and wife and have not been such since September 19, 1942, when the divorce was granted to the petitioner by the Nevada court." A similar recital appears in each of the decrees.

An examination of the record discloses the following facts. Shortly after the decree was entered in the separate support proceedings on March 25, 1942, and while the appeal to this court was pending, the respondent went to Reno, Nevada, and after remaining there for the period required by Nevada law, instituted proceedings for divorce against the petitioner. The petitioner also went to Nevada, retained counsel, and filed an answer and cross complaint, so called, in which she asked for a divorce on grounds of extreme cruelty. It further appears that on September 16, 1942, the petitioner and the respondent executed an agreement in which the petitioner acknowledged the receipt of \$7,500 from the respondent; the agreement also contained a provision for weekly payments to the petitioner who released the respondent from all obligations for further support except as stated in the agreement. Each released [fol. 614] all claims against the other's estate. On September 19, 1942, a divorce was granted to the petitioner on her cross complaint, and as prayed for in the complaint the above mentioned agreement was "ratified, approved and confirmed, and adopted by the court as a part of its judgment . . . [therein], and each of the parties . . . [was] ordered and directed to comply with the terms thereof." No appeal was ever taken from the Nevada judgment. Thereafter the petitioner returned to Worcester and on May 22, 1943, instituted the proceedings which gave rise to this appeal. It was agreed that the respondent had in the meantime remarried.

We think that the judge erred in denying the petitioner the right to introduce evidence to impeach the Nevada judgment. The respondent, relying on *Williams v. North Carolina*, 317 U. S. 287, contends that the Nevada judgment is entitled to full faith and credit under § 1 of art. 4 of the United States Constitution. It is well settled that a bona

fide residence on the part of at least one of the parties is essential to the validity of a decree of divorce. *Bell v. Bell*, 181 U. S. 175, 178. *Bergeron v. Bergeron*, 287 Mass. 524, 527-528. Am. Law Inst. Restatement: Conflict of Laws, §§ 111, 113. Beale, Conflict of Laws, § 111.1 And this principle applies even though both parties are before the court. *Andrews v. Andrews*, 188 U. S. 14, 41, 42. *Langewald v. Langewald*, 234 Mass. 269, 271. There is nothing to the contrary in *Williams v. North Carolina*, *supra*. In discussing that case in the recent decision of *Bowditch v. Bowditch*, 314 Mass. 410, this court said at page 415: "As we interpret the decision under discussion, we are of the opinion that it is still competent for the courts of other States to inquire into the validity of a divorce so far, at least, as its validity depends upon the jurisdiction of the State where the divorce was granted, and that a domicil by one of the parties in the State in which the divorce was granted is essential to jurisdiction." [fol. 615] The mere fact that the Nevada judgment of divorce recited that the court had jurisdiction is not conclusive and it may be contradicted. *Bell v. Bell*, 181 U. S. 175, 177, 178. *Sewall v. Sewall*, 122 Mass. 156, 161. *Davis v. Davis*, 305 U. S. 32, relied upon by the respondent, is distinguishable. In that case the question of jurisdiction was contested in Virginia where the divorce was granted and there was an express finding in that court that the petitioner was domiciled in Virginia.

The respondent asserts that, even if the Nevada court was without jurisdiction to grant a divorce, the petitioner by obtaining the divorce and receiving \$7,500 from the respondent is precluded from repudiating it in the courts of this Commonwealth within the principles set forth in *Chapman v. Chapman*, 224 Mass. 427, and cases there collected. See also Am. Law Inst. Restatement: Conflict of Laws, § 112; *Parmelee v. Hutchins*, 238 Mass. 561; *Bergeron v. Bergeron*, 287 Mass. 524, 528; 109 Am. L. R. 1018 note. But before this could be decided it was necessary to determine whether the Nevada divorce was obtained in violation of G. L. (Ter. Ed.) c. 208, § 39.¹ It has been held that

¹ "A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual

where a divorce in a foreign jurisdiction has been obtained in violation of this statute, one who participates in it is not precluded from questioning it in our courts. *Smith v. Smith*, 13 Gray, 200. *Andrews v. Andrews*, 176 Mass. 92. *Chapman v. Chapman*, 224 Mass. 427, 431, 432. *Langewald v. Langewald*, 234 Mass. 269, 271, 272. This is on the [fol. 616] grounds "of general public policy and public interest," and the parties cannot waive it. *Chase v. Chase*, 6 Gray, 157, 161. In the *Andrews* case it was said by Holmes, C. J., in speaking of the statute, "The Commonwealth having intervened by legislation, the appellant gets the benefit of it irrespective of any merits of her own . . . It is settled that in a case within the statute the divorce is to be treated here as void for all purposes . . . It is settled that there is no estoppel even as against the party instituting the foreign proceedings" (page 96). The *Chapman* case was decided on the basis that the statute had not been violated and there were express findings to that effect. The present case is distinguishable from *Loud v. Loud*, 129 Mass. 14, and *Langewald v. Langewald*, 234 Mass. 269, 272, where it was held that a spouse who connives at or acquiesces in a second marriage of the other spouse is precluded from obtaining a divorce in our courts on grounds of adultery. The petitioner is not seeking a divorce from the respondent because of adultery arising from his remarriage.

In the case at bar it was important to know whether the Nevada court had jurisdiction and whether the statute (G. L. [Ter. Ed.] c. 208, § 39) had been violated. The answers to these questions cannot be ascertained from the record because the petitioner was denied the right—which we think was error—to introduce evidence with respect to them.

in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth." In *Andrews v. Andrews*, 188 U. S. 14, it was held that this statute was not repugnant to the full faith and credit clause of the United States Constitution.

It follows that the decrees appealed from are reversed and the cases are to stand for hearing in conformity with this opinion.

Ordered accordingly.

[fol. 617] COMMONWEALTH OF MASSACHUSETTS

Boston, January 9, 1947.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Katharine C. Coe vs. Martin Van Buren Coe, decided on the fifth day of June, 1944.

Ethelbert V. Grabel, Reporter of Decisions.

[Endorsed:] Katharine C. Coe vs. Martin Van Buren Coe. Certified Copy of the Opinion of the Supreme Judicial Court.

[fol. 618] WILKINS, J.:

The marital controversies between Katharine C. Coe and Martin Van Buren Coe (hereinafter referred to as Mrs. Coe and Mr. Coe, respectively) reach this court for the third time. In 313 Mass. 232, we affirmed a decree of the Probate Court of Worcester County, dated March 25, 1942, awarding Mrs. Coe \$35 a week for her separate support. On May 22, 1943, Mrs. Coe filed a petition for contempt against Mr. Coe for failure to comply with that decree, and on August 30, 1943, she filed a petition (amended October 21, 1943) for modification of that decree. To the petition for modification Mr. Coe filed a plea in bar based upon certain Nevada divorce proceedings. On September 7, 1943, he filed a petition to revoke the separate support decree. In 316 Mass. 423, because Mrs. Coe had been denied the right to introduce evidence to show that the Nevada court did not have jurisdiction and that there had been a violation of G. L. (Ter. Ed.) c. 208, § 39, we reversed decrees dismissing her petitions and a decree allowing Mr. Coe's petition to revoke, and the rescript ordered the cases "to stand for hearing in conformity with the opinion." The rescript interpreted in the light of the opinion (*E. Kronman, Inc. v. Bunn Bros., Inc.*, 265 Mass. 549, 552) did not mean that only the judge who had heard the cases could conduct the hearing. The words "further hearing" were

not used, as had been done in *Woodworth v. Woodworth*, 271 Mass. 398, 400; see 273 Mass. 402, 406-407. Even those words, "unless expressly limited, ordinarily import a new trial of those matters as to which the new or further hearing is to be had." *C. W. Hunt Co. v. Boston Elevated Railway*, 217 Mass. 319, 320-321.

After rescript the three petitions, together with a petition of Mrs. Coe for counsel fees and expenses, were heard by a judge of probate of Hampden County designated under G. L. (Ter. Ed.) c. 217, § 8, as appearing in St. 1937, [fol. 619] c. 408, § 5. On May 21, 1945, decrees were entered dismissing the petition for contempt; modifying the decree of March 25, 1942, by ordering Mr. Coe to pay for the support of Mrs. Coe \$5,000 forthwith and \$100 weekly; requiring Mr. Coe to pay to Mrs. Coe \$1,000 for her use in maintaining her petition for modification and in her defence in the matter of the petition for revocation; and dismissing the petition for revocation. On May 31, 1945, Mr. Coe appealed from the decree for modification, the decree for \$1,000 "for counsel fees," and the decree dismissing the petition for revocation. The judge filed a report of the material facts found by him. G. L. (Ter. Ed.) c. 215, § 11. The evidence is reported. *Shattuck v. Wood Memorial Home, Inc.*, 319 Mass. 444, 445-446. *Rubinstein v. Rubinstein*, 319 Mass. 568, 569.

1. We first consider a contention of Mr. Coe that the judge of probate of Hampden County who entered the decrees was without power and authority to act in these cases. On July 7, 1944, the first judge of probate of Worcester County (who was not the judge who theretofore had heard the cases) made the following designation under G. L. (Ter. Ed.) c. 217, § 8, as appearing in St. 1937, c. 408, § 5: "I request Honorable Thomas H. Stapleton, judge of probate, in and for the county of Hampden, to perform part of the judicial duties of this court by holding a simultaneous session of this court at the court house in Worcester, at times and places to be designated by said aforesaid judge of probate, by reason that neither of the judges of probate are available to hear said case." In view of later occurrences it is not clear what was meant by "said case." On July 10, 1944, there was a hearing, hereinafter referred to, concerning the present cases before the acting judge of probate previously designated. Although the request of July 7, 1944, had nothing to do with these cases, through

error the certification of designation of the judge of probate [fol. 620] of Hampden County as acting judge was entered under the docket number of these cases. This was later changed so that the designation was docketed with a new number under the name of the judge designated. On October 19, 1944, Mr. Coe filed a motion that the designation of the judge of probate of Hampden County to hear the cases be vacated. There were numerous grounds assigned for the motion, the chief of which was that the hearing should be before the judge of probate of Worcester County who had previously heard the cases. On January 4, 1945, the motion was denied by the first judge of probate of Worcester County, "it appearing that the certification referred to was entered on the docket in this case by mistake and inadvertence and has now been expunged." On January 18, 1945, the judge who had originally heard the cases assigned them for hearing before the judge of probate of Hampden County who had been designated as set forth above. On January 22, 1945, Mr. Coe filed a motion to revoke the assignment. On January 31, 1945, the judge who had originally heard the cases denied the motion by a decree which contained in substance the following findings: While Judge Wahlstrom, who had heard all previous matters, was "away on summer vacation and thus unavailable," the designation was made of Judge Stapleton, who sat on July 10, 1944, and heard and decided "four preliminary matters." At that hearing "various matters concerning the case were discussed and counsel submitted documents to said court so that he might become familiar with what had transpired in the case, and a discussion was had regarding a continuance of the hearing. . . . [P]ractically one entire day was devoted to matters concerning said case.

[B]oth Honorable Thomas H. Stapleton and counsel for both parties believed that they had commenced hearings in said case and that the matter was therefore continued generally for further hearing before Honorable Thomas H. Stapleton. This court therefore finds that said [fol. 621] case is now before Honorable Thomas H. Stapleton for hearing on all matters pending." Mr. Coe appealed.

That the foregoing findings were not erroneous is clear from an examination of the stenographic report of the proceedings on July 10, 1944, contained in the record, which does not sustain the numerous contentions of Mr. Coe. It cannot rightly be said that the cases were not properly

before the judge of probate of Hampden County on February 5, 1945, and later dates, when they were heard to a conclusion on the merits. Because of what had occurred on July 10, 1944, when the original judge was unavailable, even though no witnesses were called, it was of no consequence that he was available on February 5, 1945, and later dates. A contrary ruling was not required by reason of proceedings (naturally not to be found in this record) on January 11, 1945, before a single justice of this court. We hold to be unfounded not only the argument that the judge of probate of Hampden County was selected by counsel for Mrs. Coe to hear the cases, but also the contention that there was impropriety in the assignment of that judge to hear these cases. There was compliance in all respects with G. L. (Ter. Ed.) c. 217, § 8, as appearing in St. 1937, c. 408, § 5.

2. We next consider the decree dismissing Mr. Coe's petition for revocation of the separate support decree of March 25, 1942. The petition contains allegations that "by virtue of a decree dated September 19, 1942, duly entered in the First Judicial District of the State of Nevada the said Katharine C. Coe was awarded a judgment dissolving the marriage between the said Katharine C. Coe and your petitioner and they are no longer husband and wife," and that since the decree "the conditions and relations between your petitioner and said Katharine C. Coe have become so materially altered as to require revocation or modification of said decree." There are prayers that the parties be adjudged to be "no longer husband and wife," that the petition for contempt be dismissed, and for such further relief [fol. 622] as the court "deems equitable." Among the material facts found by the judge are the following: The parties were married in New York, New York, on May 15 or 16, 1934, at which time they were residents of, and domiciled in, Worcester. They thereafter resided in Worcester. In May, 1942, Mr. Coe left Worcester and went to New York city, where he had had an apartment since 1940, but no domicile. He left New York with one Dawn Allen, and on June 10, 1942, arrived in Reno, Nevada. On July 27, 1942, he filed a complaint for divorce in the First Judicial District Court of the State of Nevada in and for the County of Ormsby. Following service of the summons upon her in Worcester Mrs. Coe on August 25, 1942, arrived in Reno.

She lived for a few days at a hotel and then hired a room elsewhere. She had never been in Nevada before. On August 28, 1942, she filed a demurrer to the complaint. On September 19, 1942, she filed an answer and a cross complaint, and on the same date a decree of divorce was entered in her favor on her cross complaint. The decree "further ordered that the written agreement entered into by the plaintiff and defendant herein on the 16th day of September, 1942, be, and the same is hereby ratified, approved and confirmed, and adopted by the court as a part of its judgment herein, and each of the parties is hereby ordered and directed to comply with the terms thereof." In accordance with the decree Mrs. Coe received \$7,500 outright as provided in the agreement. The agreement also provided for the payments of \$35 weekly to Mrs. Coe, but such payments have not been made to her. Mr. Coe paid her counsel \$1,000. Immediately after the divorce hearing Mr. Coe and Dawn Allen went through a marriage ceremony performed by the judge who granted the divorce decree. "I find on all the evidence that the respondent Coe never intended to change his residence from Massachusetts. I find that his claim of residence in Nevada was a fraud." Mrs. Coe "went to Nevada for the purpose of defending herself [fol. 623] against her husband's action for divorce and also to obtain a divorce. This while she was still a resident of, and domiciled in, Massachusetts. I find that she went to Nevada to obtain a divorce for a cause which occurred in Massachusetts while the parties resided in Massachusetts. . . . I find that the respondent, Mr. Coe, went to Nevada to seek a divorce. . . . I find he had no grounds for a divorce on any incident that happened in Massachusetts or elsewhere. I find that neither he nor Mrs. Katharine C. Coe had a bona fide residence in Nevada according to the law of Nevada. I find that the Nevada court did not have jurisdiction of either party. I find that the divorce was in violation of the provisions of G. L. (Ter. Ed.) c. 208, § 39. Shortly after the divorce in Nevada, both parties returned to Worcester, Massachusetts, and have since resided in Worcester. . . . I find that both parties are now residents of Massachusetts. I find the parties are husband and wife in Massachusetts."

The Nevada divorce proceedings are made part of the reported evidence. The complaint there filed by Mr. Coe was based upon extreme cruelty and desertion and alleged

that the "plaintiff for more than six weeks last past and immediately preceding the filing of this complaint has been continuously and now is, a bona fide resident of, and during all of said period of time, has had and now has his residence within the State of Nevada, and has been physically, corporally and actually present in said State during all of the aforesaid period of time." Mrs. Coe's answer admitted the allegations as to residence. Her own complaint was based upon extreme cruelty, and alleged that "at the time of the filing of the plaintiff's complaint herein, the plaintiff could be found within the State of Nevada, and that the plaintiff can still be found within said State of Nevada." There were no allegations as to her own residence, [fol. 624] but the agreement dated September 16, 1942, and acknowledged September 19, 1942, and approved in the decree, provided that weekly payments be mailed to her at 32 Howland Terrace, Worcester, which was the residence given as hers by Mr. Coe in his affidavit for publication of summons.

We give no weight to the so-called finding that "the Nevada court did not have jurisdiction of either party," which is to be read in connection with the preceding finding that neither party "had a bona fide residence in Nevada according to the law of Nevada" and in the light of the earlier findings that each party was resident or domiciled in Massachusetts. We treat the case as one in which both parties were domiciled in Massachusetts, and not in Nevada, a finding which the judge was not plainly wrong in making. *Cohen v. Cohen*, 319 Mass. 31. *Rubinstein v. Rubinstein*, 319 Mass. 568. The circumstance that both parties were temporarily physically in the State of Nevada and before the court does not alter the fundamental principle that "jurisdiction to grant a divorce must be based upon the domicile of at least one of the parties." *Cohen v. Cohen*, 319 Mass. 31, 34, and cases cited. *Bergeron v. Bergeron*, 287 Mass. 524, 528. There is no basis for a contention that there had been an actual litigation and determination of the jurisdictional facts within *Davis v. Davis*, 305 U. S. 32. "This was no adversary proceeding such as would warrant a finding of a genuine contest before a court having jurisdiction." *Langewald v. Langewald*, 234 Mass. 269, 270. Great stress, however, is laid upon the fact that Mrs. Coe in her answer (filed with her cross complaint on the date of the acknowledgment of the settlement agree-

ment and the day of the divorce hearing) admitted the residence of Mr. Coe in Nevada. While it is true that instead she could have denied and litigated this fact, that was hardly to be expected in a collusive proceeding such as this plainly had become by that time. What happened was no more than an attempt to confer jurisdiction by [fol. 625] consent in disregard of the interests of this Commonwealth, where the parties were both domiciled. As was said in *Andrews v. Andrews*, 188 U. S. 14, 41, "But it is obvious that the inadequacy of the appearance or consent of one person to confer jurisdiction over a subject matter not resting on consent includes necessarily the want of power of both parties to endow the court with jurisdiction over a subject matter, which appearance or consent could not give." The effect of G. L. (Ter. Ed.) c. 208, § 39,¹ renders the divorce in this jurisdiction "void for all purposes" and "there is no estoppel even as against the party instituting the foreign proceedings." Holmes, C. J., in *Andrews v. Andrews*, 176 Mass. 92, 96. *Chapman v. Chapman*, 224 Mass. 427, 431. *Coe v. Coe*, 316 Mass. 423, 428. Accordingly, we are constrained to hold that Mrs. Coe is not estopped to deny the validity of the divorce. The separate support petition of Mrs. Coe against Mr. Coe in the Probate Court of Worcester County, which alleged that he had deserted her and that she was living apart from him for justifiable cause, was dated January 11, 1941, and was filed January 13, 1941 (313 Mass. 232, 233). It is clear that the divorce (extreme cruelty being included within cruel and abusive treatment² under G. L. (Ter. Ed.) c. 208, § 1) was, as the judge found, "for a

¹"A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

²See report of the commissioners for consolidating and arranging the Public Statutes (1901), page 1327. See also *Freeman v. Freeman*, 238 Mass. 150, 160.

cause occurring here while the parties resided here." Obtaining the divorce being one of the purposes of both Mr. [fol. 626] and Mrs. Coe in going to Nevada—and the judge, to say the least, was not plainly wrong in so finding—the statute applies. In *Smith v. Smith*, 13 Gray, 209, where a husband was allowed to maintain a libel in this Commonwealth notwithstanding the fact that he had obtained a decree of divorce in Indiana in violation of the statute, it was said by Chief Justice Shaw, at page 210, "If this were a mere private action, or suit in which the personal rights of the parties alone were concerned, there would be strong reason for applying the doctrine of estoppel, to the act of the husband, in resisting the present motion of the wife. But a suit for divorce is of a very different character; it is one in which the public have an interest, and in the conduct and result of which the best interests of society are concerned. Where proceedings in divorce are rightly commenced and conducted, the decree of divorce fixes the status of the parties for all purposes. But if the statute declares the divorce in Indiana wholly void and without force in this State, it cannot be made good by the consent of either or both the parties." We have been referred to many cases in other States whose policy it is to deny relief in their courts to parties seeking to repudiate a divorce obtained through voluntarily invoking the aid of a court of another jurisdiction. Whatever may be said as to the honor and ethics of such individuals, we can only state that, so far as are concerned cases falling within G. L. (Ter. Ed.) c. 208, § 39—and the present case is one of them—the declared legislative policy of this Commonwealth has long been otherwise. In addition to cases hereinbefore cited, see *Chase v. Chase*, 6 Gray, 157; *Sewall v. Sewall*, 122 Mass. 156, 161; *Hardy v. Smith*, 136 Mass. 328; *Maloof v. Abdallah*, 218 Mass. 21, 23.

Certain decisions relied upon by Mr. Coe are not in point. Mrs. Coe does not, as did the petitioner for an annulment of marriage in *Ewald v. Ewald*, 219 Mass. 111, make her wrongful conduct the very ground of an application for [fol. 627] relief from its consequences. See *O'Gasapian v. Danielson*, 284 Mass. 27, 34; *Paula v. Soares*, 304 Mass. 450; *Kerwin v. Donaghy*, 317 Mass. 559, 573; *Swenson v. Swenson*, 320 Mass. 105, 110. (Mass. Adv. Sh. [1946] 925, 929.) In *Payzant v. Payzant*, 269 Mass. 70, there was no lack of jurisdiction in the court which granted the divorce.

We have examined such exceptions to the admission of evidence as have been argued, and think that Mr. Coe was not injured. The scope of the cross-examination of Mr. Coe was largely within the discretion of the judge, no abuse of which is shown. The testimony of Mrs. Coe that she told her Nevada counsel that Mr. Coe always lived in Worcester was purely cumulative on that issue of fact and was, at most, harmless.

The decree dismissing the petition for revocation of the decree of separate support was right.

3. We proceed to a consideration of the decree upon Mrs. Coe's amended petition to modify the decree of March 25, 1942, which contained an allegation that "under all the facts and circumstances, including the increased costs of living, the adequate financial means of the respondent and the reasonable needs of your petitioner according to her status of life of which the respondent wrongfully deprived her, \$35 per week is in amount insufficient in fact and in law." There were prayers for an increased award and for "such other and further relief as the petitioner may be equitably entitled to." Mr. Coe filed a substituted plea in bar as well as an amended answer based, in part, upon the Nevada divorce decree and settlement contract. For reasons we have already stated, there was no error in not sustaining the plea in bar or in failing to find in accordance with the allegations of the amended answer in so far as they were based upon the Nevada divorce.

There was no error in not ruling that the agreement dated [fol. 628] September 16, 1942, is a bar to revision of the decree. It is assumed in accordance with the testimony that the agreement is a valid contract under the law of Nevada. *Coxe v. Coxe*, 21 Del. Ch. 30. See *Meyer v. Meyer*, 124 N. J. Eq. 198, 200. See also *Milliken v. Pratt*, 125 Mass. 374; Am. Law Inst. Restatement: Conflict of Laws, §§ 333, 346. It provides that in the event of a decree of divorce "the terms of this agreement shall be presented to the court with the request that the same be ratified, approved and confirmed by the court." As has been stated above, this was done. Thereafter under Nevada law the agreement was merged in the divorce decree. *Lewis v. Lewis*, 53 Nev. 398, 411. Compare *Wilson v. Caswell*, 272 Mass. 297. We do not reach consideration of the question of evidence whether Mrs. Coe was erroneously permitted to testify that she did not sign

the contract freely and voluntarily, nor need we determine whether it could be found that the contract was a bad bargain.

A decree for separate support under G.L. (Ter. Ed.) c. 200, §32, is subject to revision from time to time as circumstances may require: *Gifford v. Gifford*, 244 Mass. 302, 305. *Slavinsky v. Slavinsky*, 287 Mass. 28, 32. *Watts v. Watts*, 314 Mass. 129, 133. Upon petition to the court which made the original decree, that court can consider any change in the position of the parties and any supervening facts, and make such order as justice requires. *McIlroy v. McIlroy*, 208 Mass. 458, 465. See *Burgess v. Burgess*, 256 Mass. 99, 100; *Barry v. Sparks*, 306 Mass. 80, 83; *Coughlin v. Coughlin*, 312 Mass. 452, 454. See also *Perkins v. Perkins*, 225 Mass. 392, 397-398. Such petition may be by either party. *Malcolm v. Malcolm*, 257 Mass. 225, 228.

In his report of material facts the judge found as follows: Mrs. Coe's physical condition "has changed greatly since the separation and since the decree of separate support." She is suffering from a serious heart ailment. Her condition, which is getting worse, is incurable. She is [fol. 629] unable to do any kind of work. Her condition began to change in the fall of 1942, immediately after her return from Nevada. "I took into consideration the payment of \$7,500 in reaching a decision on the petition for modification." "I find that the payments under the order for separate support should be revised as of a date about October 1, 1942. I based the increase in the order for payments under the separate support decree on the inability of the petitioner Mrs. Coe to support herself; her need of assistance in performing any simple task or household duty; her need of medical attention and the known increased cost of living, and the ability of Mr. Coe to make payments."

The amended petition, which does not refer to any changed condition of Mrs. Coe's health, alleges no ground on which the evidence will support a decree for modification. There was no evidence of the extent of any "increased costs of living" between March 25, 1942, the date of the original order, and May 21, 1945, the date of the decree on the amended petition. The question of the "reasonable needs of your petitioner according to her status of life of which the respondent wrongfully deprived her" was adjudicated in 313 Mass. 232. That there were "adequate financial means of the respondent" is not a changed circum-

stance. Moreover, the judge based his order of May 21, 1945, "on a finding of net worth of not less than \$600,000." That finding was plainly wrong. It was expressly based upon a finding that "[d]uring a period of about three years ending in 1933, he received in money and securities over \$600,000," and upon a finding of failure to show any substantial losses in twelve years thereafter. But counsel for Mrs. Coe introduced in evidence answers of Mr. Coe to interrogatories propounded by Mrs. Coe, which showed that, as of a time immediately prior to the original separate support hearing, he had a net worth of approximately \$200,000. [fol. 630] Mrs. Coe was bound by these answers, which were uncontradicted. *Minihan v. Boston Elevated Railway*, 197 Mass. 367, 373. *Bell Cab Co. v. New York, New Haven & Hartford Railroad*, 293 Mass. 334, 336. *Champlin v. Jackson*, 317 Mass. 461, 463. *Falzone v. Burgoyne*, 317 Mass. 493, 495. *Meunier's Case*, 319 Mass. 421, 423.

It does not appear that any objection was made to the introduction of evidence as to the physical condition of Mrs. Coe as a ground for modification. We, accordingly, consider that evidence, an examination of which does not show that the findings as to Mrs. Coe's heart condition are plainly wrong. Although she was ill from some not too clearly defined cause at the time of the original hearing on her separate support petition in March, 1942, there was testimony from which the judge who heard the petition for modification could have found that her general condition had deteriorated, and that her heart ailment was becoming worse and was incurable. The finding that she is unable to do any kind of work is not plainly wrong, and shows a changed circumstance. While she testified that in March, 1942 (when the decree on the separate support petition was entered), her physical condition was such that she was unable to engage in any gainful employment, it could be found that she is now unable to do housework as well.

As the finding as to the present financial worth of Mr. Coe was based upon subsidiary findings which cannot stand, there was error in the decree for modification.

4. A further question concerns the appeal of Mr. Coe from the decree allowing costs and expenses to Mrs. Coe which was entered simultaneously with the decree in the proceedings in connection with which they were allowed. That decree was authorized by G.L. (Ter. Ed.) c. 209, § 33,

as appearing in St. 1933, c. 360. See also, as to allowance of costs and expenses in divorce proceedings, G.L. (Ter. Ed.) c. 208, § 38, as appearing in St. 1933, c. 288. The subject matter rested largely in the discretion of the judge, and we see no occasion for revising its exercise. *Spilios v. Papps*, [fol. 631] 292 Mass. 145, 147-148. See *Commissioner of Insurance v. Massachusetts Accident Co.*, 318 Mass. 238, 241-242. The cases of *Wallace v. Wallace*, 273 Mass. 62 (divorce), and *Densten v. Densten*, 280 Mass. 48 (separate support), upon the enactment of St. 1933, c. 288, and St. 1933, c. 360, ceased to be authority for the proposition that costs and expenses could not be allowed in subsidiary proceedings in libels for divorce or in subsidiary proceedings arising under petitions for separate support. See *Rubinstein v. Rubinstein*, 319 Mass. 568, 576.

5. The contention that the judge did not afford to Mr. Coe a full, fair, and impartial trial is not borne out by the record. See *Skudris v. Williams*, 287 Mass. 568, 571; *King v. Grace*, 293 Mass., 244, 247.

6. It follows that the decree dismissing Mr. Coe's petition for revocation of the decree of March 25, 1942, is affirmed; the decree upon Mrs. Coe's petition to modify the decree of March 25, 1942, is reversed; and the decree for costs and expenses is affirmed.

So ordered.

[fol. 632] COMMONWEALTH OF MASSACHUSETTS

Boston, January 9, 1947.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Katharine C. Coe vs. Martin Van Buren Coe decided on the thirtieth day of October, 1946.

Ethelbert V. Grabel, Reporter of Decisions.

[Endorsed:] Katharine C. Coe vs. Martin Van Buren Coe. Certified Copy of the Opinion of the Supreme Judicial Court.

[fol. 633] COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS:

Probate Court.

I hereby certify the foregoing is a true copy of the record in the proceedings of Katharine C. Coe vs. Martin V. B. Coe in the Probate Court for the County of Worcester and said Commonwealth.

Witness my hand and the seal of said Probate Court this fourteenth day of January, in the year of our Lord one thousand nine hundred and forty-seven.

F. Joseph Donohue, Register of Probate. (Seal.)

[fol. 634] COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS:

Probate Court.

I, Harry H. Atwood, Judge of the Probate Court, for the County of Worcester and Commonwealth of Massachusetts, do Certify that F. Joseph Donohue, whose signature is affixed to the paper hereunto annexed, is the Register of Probate, for the County of Worcester, and hath the keeping of the files, records and proceedings of said Court, holden within and for said County, and is by law, the proper person to make out and certify copies thereof, and that full faith and credit are and ought to be given to his acts and attestations done as aforesaid, and that his attestation to the paper hereunto annexed, is in due form.

In Testimony whereof, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed, this fourteenth day of January in the year of our Lord one thousand nine hundred and forty-seven.

Harry H. Atwood, Judge of the Probate Court.
(Seal.)

[fol. 635] COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS:

Probate Court.

I, F. Joseph Donohue, Register of Probate, for the County of Worcester and said Commonwealth of Massachusetts, do hereby certify that Harry H. Atwood, Esquire, is a Justice of said Probate Court within and for said Commonwealth of Massachusetts.

Witness my hand and the seal of said Probate Court this fourteenth day of January, in the year of our Lord one thousand nine hundred and forty-seven.

F. Joseph Donohue, Register of Probate. (Seal.)

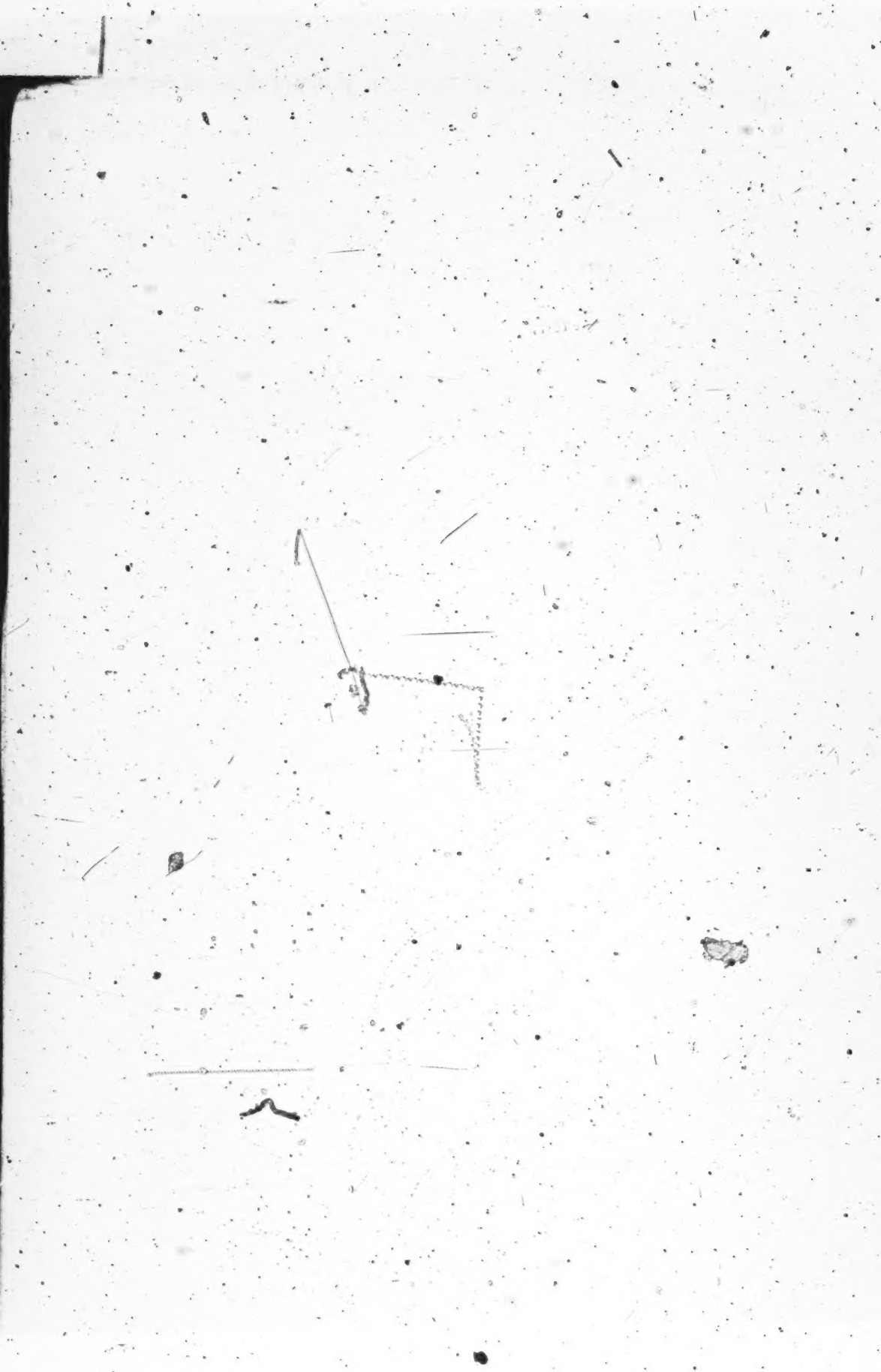
[fol. 636] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

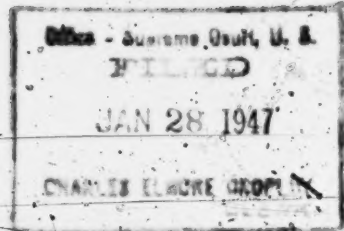
The petition herein for a writ of certiorari to the Probate Court for the County of Worcester, Commonwealth of Massachusetts, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1362)



FILE COPY



No 958 37

Supreme Court of the United States.

OCTOBER TERM, 1946.

MARTIN V. B. COE, PETITIONER,

v.

KATHARINE C. COE, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
PROBATE COURT FOR THE COUNTY OF
WORCESTER, MASSACHUSETTS.

ARTHUR V. GETCHELL,

Attorney for Petitioner.

Of counsel:

GEORGE H. MASON,

SAMUEL PERMAN.

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Supreme Court of the United States.

7
OCTOBER TERM, 1946.

MARTIN V. B. COE, PETITIONER,

v.

KATHARINE C. COE, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner prays that a writ of certiorari be issued to review the final judgment of the Supreme Judicial Court of Massachusetts.

Opinions Below.

The first opinion of the Court below in this case is reported at 316 Mass. 423, and appears in the record at page 612. The final decision is contained in the record at page 616. It is reported in 1946 Mass. Advance Sheets, 1127.

Jurisdiction.

The opinion and rescript of the Court below was entered on October 30, 1946. This petition is presented within three months from the entry of the judgment below. Jurisdiction.

is invoked under section 237 (b) of the Judicial Code, 28 U.S.C. section 344 (b). The questions presented by this petition were raised by petitioner's motion to dismiss (R. 14), by motion for entry of finding sustaining plea in bar (R. 39), by motion to strike evidence (R. 35), by objection (R. 112), and by other objections taken throughout the trial of the case.

Questions Presented.

1. (a) Did the Court below err in holding that the evidence supported the finding by the Trial Court that petitioner was not domiciled in the State in which respondent obtained her divorce, and in disregarding a contrary finding based on the pleadings and testimony of both parties made by the Court granting the divorce?
- (b) Did the Court below disregard the proper criteria and standards of proof with respect to the question of domicile?
2. May the question of the jurisdiction of the Court granting the divorce be relitigated under the Full Faith and Credit Clause by the party obtaining it, in view of the fact that both husband and wife were personally subject to the jurisdiction of the Court, raised issues on the merits, and testified in the proceedings?
3. Apart from the validity of the divorce, are the incidents of the marital relationship, such as support and property rights, subject to relitigation, under article IV, section 1, of the Constitution, when the Court deciding such issues had jurisdiction over the persons of both parties?
4. Does Massachusetts General Laws (Ter. Ed.) chapter 208, section 39, as interpreted and applied by the Court below, deprive petitioner of rights guaranteed him by the Full Faith and Credit Clause?

Statute Involved.

"A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth." (G.L. (Ter. Ed.) c. 208, sec. 39.)

Statement.

Respondent, the former wife of petitioner, on May 25, 1943, filed a petition for contempt in Probate Court for the County of Worcester, Massachusetts, alleging that she was the wife of petitioner and that he be adjudged in contempt for failure to comply with an award of support made in that Court on March 25, 1942 (R. 1). For a defense, petitioner set up as a bar a divorce obtained by respondent in Nevada in September, 1942 (R. 2). Respondent then filed a petition for modification of the support award, to which petitioner filed an answer setting up the Nevada decree and the property settlement contained thereon (R. 5, 36). Petitioner also filed a petition for revocation of the support award based upon the Nevada judgment (R. 7), and a plea in bar relying thereon (R. 18).

The trial judge dismissed the petition for contempt and the petition for revocation was sustained upon the basis of an exemplified extended record of the Nevada proceedings (R. 580-601). The parties were adjudged no longer man and wife. Respondent appealed and these decrees were reversed and the case remanded, on the ground that

4.

the Full Faith and Credit Clause, as applied to the present facts, did not preclude inquiry into the jurisdiction of the Nevada Court to grant the divorce; the Court further held that the fact that respondent was the recipient of the divorce did not estop her from showing that G.L. (Ter. Ed.) c, 208, sec. 39, which the Court held valid, had been violated. *Coe v. Coe*, 316 Mass. 423.

Upon remand of the cause, an extensive hearing was held with respect to the jurisdiction of the Nevada Court, the violation of the statute, as well as other matters.

The evidence shows that the parties were married in New York City in 1934, and until their separation in 1939 they resided in Worcester, Massachusetts. In 1940 petitioner leased an apartment in New York City, where he made his home (R. 234), taking occasional trips to inspect his Worcester properties (R. 481-482). Most of his business, which consisted of dealing in securities, was transacted in New York, where, in 1939, he formed a corporation to facilitate his business (R. 229-230).

In January, 1941, respondent filed a petition in the Probate Court for support, alleging desertion and cruelty, and on March 25, 1942, was awarded \$35 weekly for her support, which amount was sustained upon her appeal to the Supreme Judicial Court (313 Mass. 232).

On June 10, 1942, petitioner, having decided to move from New York City, arrived in Reno, Nevada (R. 114). He testified that he intended to make his home in that State for reasons of health (asthma) (R. 245), and to get away from respondent. He was attracted by the liberal tax laws of Nevada (R. 245). He also intended, while living in Nevada, to obtain a divorce, relying on a cause which occurred in New York after the March 25, 1942, decree in Massachusetts (R. 246-247).

Petitioner filed a complaint for divorce in the District Court for the First Judicial District of the State of Nevada

on July 27, 1942, alleging he was a bona-fide resident of Nevada and basing his claim for divorce upon cruelty and desertion (R. 599-601). Respondent was personally served with notice of the divorce proceeding in Worcester, Massachusetts (R. 430), and after consultation with local counsel, she went to Nevada for the purpose of contesting petitioner's action and to obtain a divorce herself (R. 431). To that end, she engaged Nevada counsel, recommended by the local Chamber of Commerce (R. 433). Respondent had not seen petitioner or been in touch with him from the time of the support proceedings in Massachusetts, in March, 1942, until the Nevada hearing on September 19, 1942, except through counsel for the purpose of the property settlement mentioned below (R. 429). Respondent did not know petitioner had gone to Reno until service of the citation was made upon her in Worcester (R. 429-430).

Respondent filed a demurrer to petitioner's complaint (R. 596). On September 18, 1942, she filed an answer, raising issues on the merits, admitting petitioner's allegations as to residence (R. 593-594), and a cross-complaint alleging cruelty. She further alleged that the parties had "entered into a written agreement fully and finally settling all property rights of every nature between them, and which said agreement she believes to be fair and reasonable" (R. 594). She prayed for a divorce on the ground of extreme cruelty and asked that the property settlement contract be ratified, approved, and adopted by the Nevada Court (R. 594). Under the terms of the property settlement, respondent was to receive \$7500 in cash immediately, and \$35 weekly for support, in consideration of which she released all claims against the estate and property of the petitioner, including all other claims for support. She was paid the \$7500 (R. 515).

The petitions for divorce were heard on September 19, 1942. Both parties were present in Court, and each was

represented by separate counsel. Petitioner testified that he had been present in Nevada from June 10, 1942, until July 27, 1942, and that with the exception of a few days he had continued to be physically present in Nevada up to the date of the divorce hearing (R. 584-585). He testified that when he came to Nevada he did so with the intention of making Nevada his home, and that intention was unchanged (R. 585). He further testified that he had opened a bank account in Reno; that he had a safety deposit box there; that he had registered his automobiles in Nevada, and taken out a driver's license (R. 585). His testimony as to residence was fully corroborated by witnesses. Petitioner made his home at a ranch near Reno (R. 584).

Respondent testified to the acts of cruelty and admitted having entered into a property settlement which respondent requested the Court to approve and adopt (R. 586-587). The Nevada Court found on the evidence that it had jurisdiction of the plaintiff and defendant and of the subject-matter (R. 588). The Court awarded a divorce to the respondent and ratified, approved, confirmed, and adopted the property settlement contract, ordering each of the parties to comply with its terms (R. 589).

Petitioner remarried the day respondent received her divorce and returned to New York with his wife for the purpose of vacating his apartment, the lease of which was shortly to expire (R. 253). He thereafter went to Worcester, Massachusetts, for the purpose of disposing of his real estate. He sold the house he had lived in in Worcester (R. 254) and rented the other. Petitioner then returned to Nevada with his wife in May, 1943, in order to purchase a home and other property there (R. 254, 255, 575). He was particularly interested in purchasing and operating the ranch at which he had lived previously, and entered into negotiations with a view to acquiring it (R. 255).

Shortly after his arrival in Reno, he learned that the contempt proceedings had been started against him in Massachusetts (R. 255) and he was advised by his Nevada counsel to return to Massachusetts and defend that action (R. 257, 575). Petitioner and his wife returned in August, 1943 (R. 334). His testimony was corroborated by the deposition of his Nevada counsel, presently Attorney General of that State. The validity of the divorce under Nevada laws was proved in the same manner (R. 564-579).

Petitioner was advised by counsel upon his return to Massachusetts that the contempt proceedings were likely to continue over a protracted period of time (R. 257-258). Petitioner, therefore, had a corporation owned by him purchase a house in Worcester as an investment and he and his second wife resided in it while the present proceedings continued. The instant proceedings were begun in May, 1943, and had not as yet been concluded. Petitioner's counsel deemed it essential that petitioner stay in Massachusetts during this period.

The Trial Court in Massachusetts labeled most of the testimony of the petitioner false, disregarded completely the depositions of the Nevada counsel, and found that petitioner had never intended to change his Massachusetts domicile, despite his residence in New York and Nevada. The trial judge also found that the Nevada Court did not have jurisdiction of either party. He concluded that the divorce was invalid, and was in violation of G.L. (Ter. Ed.) c. 208, sec. 39, for the reason that the cause arose in Massachusetts, and that the parties were husband and wife in Massachusetts (R. 45-51). He thereupon overruled the plea in bar and dismissed the petition for revocation of the support order. The trial judge's conclusions with respect to the invalidity of the Nevada divorce proceedings and the violation of the statute were affirmed by the Supreme Judicial Court of Massachusetts.

Reasons for Granting the Writ.

1. The Court below has decided an important question of constitutional law which has not been heretofore determined by this Court. This case, unlike the first *Williams* case, 317 U.S. 287, the second *Williams* case, 325 U.S. 226, and the *Esenwein* case, 325 U.S. 279, presents a situation in which the divorce was granted with both parties filing pleadings on the merits, personally present before the Court, and testifying in the proceedings. See Radin, *The Authenticated Full Faith and Credit Clause*, 39 Ill. L. Rev. 1, 27. Furthermore, the State is not a party to this proceeding.

Even apart from the rule as to *res judicata* with respect to matters of jurisdiction, the Court below erred in holding that petitioner was domiciled in Massachusetts. The respondent, at her own expense, went from Worcester, Massachusetts, to Reno, Nevada, to contest the husband's divorce action. She was successful and obtained a divorce upon her own cross-complaint. She did not know that petitioner had sought a divorce until the citation was served upon her in Worcester. There was no communication between the spouses, until respondent arrived in Nevada, and then only through counsel for the purpose of a property settlement. Thus there is no foundation for a finding of prearrangement or collusion between the parties with respect to the Nevada divorce. The record is replete with evidence of petitioner's actual domicile in Nevada at the time he instituted the divorce proceedings. That his intention of making Nevada his home continued is evidenced by the uncontroverted fact that, after leaving Nevada temporarily when the divorce was granted, in order to settle his affairs in the East, he returned to that State with his second wife to purchase a home and a business there. He would not have left Nevada again but for the necessity of defend-

ing the contempt proceedings which were instituted by respondent in Massachusetts, soon after she had obtained her divorce.

An examination of the record in this case indicates that the trial judge was determined to hold the Nevada divorce invalid, no matter what the evidence indicated. Since that evidence did not support his findings, he chose the convenient device of "disbelieving" it. He magnified trivial inconsistencies in petitioner's testimony, readily explainable by reason of the fact that petitioner is quite deaf (R. 266-267). Among the findings of fact made is one to the effect that the Nevada Court did not have jurisdiction over the persons of the parties (R. 50). Such a finding is clearly an attempt to convert a constitutional claim into an unreviewable finding of fact in order to thwart review by this Court. *Williams v. North Carolina*, 325 U.S. 226, 236. The finding is without support in the record. The Trial Court made many similar findings in its effort to avoid review here. Most such findings were affirmed. The jurisdictional issue of domicile is open to review by this Court where a State tribunal has held invalid a judgment of divorce granted by a sister State. *Williams v. North Carolina*, 325 U.S. 226, 231, 7.

Moreover, in the instant case, the proper criteria and standards of proof for collaterally attacking a judgment based upon domicile have been completely disregarded by the Court below. It has ignored relevant evidence presented by petitioner and has persisted in the erroneous view stated earlier in *Bowditch v. Bowditch*, 314 Mass. 410, 415-416, that "one who relies upon a foreign divorce must not only plead and prove it, but must also prove his bona fide domicile at the time the divorce relied upon was granted in the foreign State . . ." (see the first opinion below, R. 612). In the second *Williams* case, *supra*, at pages 233-234, this Court stated: "The burden of undermining the verity

which the Nevada decrees import rests heavily upon the assailant."¹ But the respondent in this case has been made to bear no such burden. On the contrary, it has been the petitioner herein who has been made to bear the burden of sustaining the Nevada decree, the effect of which has been ignored by the Court, apparently upon the theory that, since it is a Nevada divorce, it is *ipso facto* invalid. This, despite the fact that uncontroverted evidence of Nevada law demonstrates that the divorce is valid in that State (R. 564-579).

2. The decision below is contrary to the decisions of this Court in *Baldwin v. Iowa State Traveling Men's Association*, 283 U.S. 522; *Davis v. Davis*, 305 U.S. 32²; and *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371.

When the parties to a cause of action are personally subject to the jurisdiction of a Court of general jurisdiction and physically present before it, in the absence of an appeal the decision of such Court is final and conclusive, not only as to matters which were decided, but also as to all matters which might have been decided, including all questions of jurisdiction over the person and subject matter. *Cromwell v. County of Sac*, 94 U.S. 351. *Chicot County Drainage District v. Baxter State Bank*, *supra*. *Davis v. Davis*, *supra*. *Woodruff v. Heiser*, 327 U.S. 726. Cf. *Stoll v. Gottlieb*, 305 U.S. 165; *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430.

¹ In accord: *Esenwein v. Commonwealth, ex rel. Esenwein*, 325 U.S. 279; *Hermans v. Hermans*, 57 N.Y.S. (2d) 614; *Davis v. Davis*, 162 Pac. (2d) 62.

² The authority of the *Davis* case was questioned by the Massachusetts Supreme Court in *Sherrer v. Sherrer*, 1946 Adv. Sheets, 1193, at 1200, where a Florida divorce was denied faith and credit despite pleadings raising residence as a factual issue and the physical presence and participation of both parties before the Florida Court.

This principle was overlooked by the Court below when it stated that there had been no actual litigation with respect to the jurisdictional facts.³ Unlike the situation presented by the two *Williams* cases, the parties before the Court below were identical with those involved in the Nevada proceeding. The State is not a party here, and therefore *res judicata* with respect both to the merits and to questions of jurisdiction is applicable to the facts in this case.

The opinion below is in conflict with cases in other States and the District of Columbia upon this issue. In *Cole v. Cole*, 96 N.J. Eq. 206, upon very similar facts, the Court held that the judgment of the Nevada Court on the question of its jurisdiction was not subject to collateral attack. Accord: *Sleeper v. Sleeper*, 129 N.J. Eq. 94 (cross-complaint plus personal appearance); *Tiedeman v. Tiedeman*, 158 N.Y.S. 851, affirmed, 275 N.Y. 709 (demurrer filed to complaint for divorce); *Bloedorn v. Bloedorn*, 76 F. (2d) 812 (personal appearance and litigation on the merits).

In the above cases there was no actual litigation with respect to domicile in the Court granting the divorce, but both parties were personally subject to the jurisdiction of the Court and participated in the proceedings to varying degrees.

Andrews v. Andrews, 188 U.S. 14, even if not modified by the *Baldwin*, *Chicot County*, and *Davis* cases, *supra*, is not in conflict with the instant case, since there the wife expressly consented to the granting of the divorce and withdrew her appearance. Moreover, the parties in that case differed from those participating in the original divorce proceedings. Since *res judicata* is a bar only where the same parties or their privies are involved in the two ac-

³ Restatement, Conflicts, section 111, comment (a), states: "Domicil, like any other jurisdictional fact, is subject to collateral attack by a party who was not personally before the Court when the decree of divorce was granted." (Emphasis supplied.)

tions, that principle did not apply in the *Andrews* case, which dealt with a contest between the two wives. Restatement, Judgments, sec. 93.

3. This case presents a question of importance under the Full Faith and Credit Clause with respect to the property incidents of marriage which has not yet been decided by this Court. The Nevada judgment at the instance of respondent dealt with the question of support and the property rights of the parties. The decree of the Court approved and adopted a contract entered into by the parties settling those issues. The Court had personal jurisdiction over both parties and therefore had the power to enter a valid personal judgment. *Pennoyer v. Neff*, 95 U.S. 714. The distinction between the jurisdiction of a State to grant a divorce and to affect property rights was recognized in *Williams v. North Carolina*, 317 U.S. 287, 293, n. 4. See Radin, The Authenticated Full Faith and Credit Clause, 39 Ill. L. Rev. 1, 28. Personal jurisdiction over both parties is needed for a Court to determine questions of support and property rights, but there is no reason why, in addition to personal jurisdiction, either of the parties must be domiciled in a State whose Court determines such matters. In *Esenwein v. Commonwealth, ex rel. Esenwein*, 325 U.S. 279, 281, Justice Douglas properly pointed out this basic difference, saying, at page 282:

"In other words, it is not apparent that the spouse who obtained the decree can defeat an action for maintenance or support in another State by showing that he was domiciled in the State which awarded him the divorce decree. It is one thing if the spouse from whom the decree of divorce is obtained appears or is personally served. See *Yarborough v. Yarborough*, 290 U.S. 202; *Davis v. Davis*, 305 U.S. 32. But I am not

convinced that in absence of an appearance or personal service the decree need be given full faith and credit when it comes to maintenance or support of the other spouse or the children. See *Pennoyer v. Neff*, 95 U.S. 714. . . ."

The Court below completely ignored this question, although it was pressed by petitioner. Thus, in the instant case, the Nevada judgment, made with both parties before the Court, finally determining questions of support and property, is held void, thereby depriving petitioner of the benefits of the Nevada judgment, which finally disposed of such issues. Cf. *Yarborough v. Yarborough*, 296 U.S. 202.

4. The statute, G.L. (Ter. Ed.) c. 208, sec. 39, as applied in this case, deprives petitioner of rights guaranteed him by the Full Faith and Credit Clause. The first clause of this statute conforms to the requirements of the Full Faith and Credit Clause, but the second clause, particularly as applied in the present case, creates an unconstitutional exception to it. The statute, which is set forth above, provides that, if an inhabitant of the State goes into another jurisdiction to obtain a divorce for a cause occurring while he resided in Massachusetts, or for a cause not authorized under Massachusetts law, a divorce so obtained is void in Massachusetts. Thus, suppose H. separates from his wife, W., and moves to Nevada, where he makes his new home. W. is an "inhabitant" of Massachusetts. H. files a suit for divorce in Nevada, serving W. in Massachusetts. W. thereupon comes to Nevada, contests H.'s divorce, files a cross-complaint based on a cause occurring in Massachusetts, and, after the divorce is granted, returns to her home in Massachusetts. Under this statute, W.'s divorce is void in that State even though the Nevada Court had jurisdiction over the subject-matter by reason of H.'s domicile in

Nevada. The hypothetical case given above approximates the present facts. It is not unusual for a divorce to be granted upon the cross-complaint of a spouse not domiciled in the State. See *Cole v. Cole*, *supra*. Nevada statutes expressly permit such a procedure. Nevada Compiled Laws, 1929, sec. 9460, as amended (R. 573, 578). Requirements of the Full Faith and Credit Clause are met since at least one spouse is domiciled in the State granting the divorce and *in personam* jurisdiction exists over both. The statute, in effect, makes divorce for a cause occurring in Massachusetts a local action rather than one transitory in nature, completely disregarding the possibility that the spouses might acquire domicile in separate states. Having acquired separate domicils, as in this case, the foreign State may enter a judgment of divorce which Massachusetts must enforce.

In *Andrews v. Andrews*, 188 U.S. 14, the validity of this statute, as applied to the facts in that case, was sustained. But there the judgment of divorce without question was obtained by collusion of the parties. Even without the statute, the result there would have been the same. The wife in that case entered an appearance in the South Dakota Court. Thereafter, by written agreement, she expressly consented to the granting of a divorce to her husband in the following terms (188 U.S. at p. 17):

"Fourth. Upon the execution of such papers, M. F. Dickinson, Jr., is authorized in my name to consent to the granting of a divorce for desertion in the South Dakota court."

Her appearance was later withdrawn. The parties to that case differed from those before the Court granting the divorce. Thus the relationship between the parties in both cases necessary for the application of *res judicata* did not exist.

Admittedly, jurisdiction cannot be conferred by consent, nor may a spouse authorize the entry of a judgment for divorce against her as though it were an action upon a judgment note. *Andrews v. Andrews, supra*. But no such facts are presented in the instant case.⁴ Here the proceedings have been adversary throughout, both in Massachusetts and Nevada. The parties are the same. The respondent herself testified in the Massachusetts Court that there had been no communication between the spouses at any time prior to the granting of the divorce, except for purposes of the property settlement in Nevada. She travelled over 2000 miles to contest petitioner's divorce. Yet the Massachusetts statute is applied to the Nevada judgment in this case, in complete disregard of the fact that the judgment is final, both with respect to the merits and with respect to the question of the domicile of petitioner.

Conclusion.

This case presents highly important problems with respect to the application of the Full Faith and Credit Clause. An authoritative ruling from this Court is necessary. It is therefore urged that this petition for a writ of certiorari be granted, and that the judgment below be reversed.

Respectfully submitted,

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⁴ Nevada Compiled Laws, sec. 9461, as amended, provides (c. 169, sec. 1): "In all civil cases where the jurisdiction of the court depends upon the residence of one of the parties to the action, the court shall require corroboration of the evidence of such residence."

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CHARLES ELMORE GOSLEY

Supreme Court of the United States.

OCTOBER TERM, 1947.

No. 37.

MARTIN V. B. COE, PETITIONER,

v.

KATHARINE C. COE, RESPONDENT.

**ON WRIT OF CERTIORARI TO THE PROBATE COURT FOR THE
COUNTY OF WORCESTER, MASSACHUSETTS.**

BRIEF FOR PETITIONER.

✓ **SAMUEL PERMAN,**

Attorney for Petitioner.

**GEORGE H. MASON,
Of Counsel.**

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Supreme Court of the United States.

OCTOBER TERM, 1947.

No. 37.

MARTIN V. B. COE, PETITIONER,
v.
KATHARINE C. COE, RESPONDENT.

BRIEF FOR PETITIONER.

Opinions Below.

The first opinion of the Court below in this case is reported in 316 Mass. 423 (R. 612). The final decision is reported in 1946 Mass. Advance Sheets, 1127 (R. 616).

Jurisdiction.

The final judgment of the Court below was entered on October 30, 1946. The petition for a writ of certiorari was filed January 28, 1947, and this Court granted the petition on March 3, 1947. Jurisdiction is invoked under section 237(b) of the Judicial Code, 28 U.S.C. sec. 344(b).

Questions Presented.

1. May the question of the jurisdiction of the Court granting the divorce be relitigated under the full faith and credit clause by the party obtaining it, in view of the fact

that both husband and wife were personally subject to the jurisdiction of the Court, raised issues on the merits and testified in the proceedings?

2. (a) Did the Court below err in holding that the evidence supported the finding by the Trial Court that petitioner was not domiciled in the State in which respondent obtained her divorce, and in disregarding a contrary finding based on the pleadings and testimony of both parties made by the Court granting the divorce?

(b) Did the Court below disregard the proper criteria and standards of proof with respect to the question of domicile?

3. Apart from the validity of the divorce, are the incidents of the marital relationship, such as support and property rights, subject to relitigation, under article IV, section 1, of the Constitution, when the Court deciding such issues had jurisdiction over the persons of both parties?

4. Does Mass. G.L. (Ter. Ed.) c. 208, sec. 39, as interpreted and applied by the Court below, deprive petitioner of rights guaranteed to him by the full faith and credit clause?

Statute Involved.

"A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

G.L. (Ter. Ed.) c. 208, sec. 39.

Statement.

On May 25, 1943, respondent, the former wife of petitioner, filed a petition for contempt in the Probate Court for the County of Worcester, Massachusetts, alleging that she was the wife of petitioner, and that he be adjudged in contempt for failure to comply with an award of support made in that Court on March 25, 1942 (R. 1). Petitioner set up as a bar to the respondent's petition a decree of divorce and property settlement obtained by respondent in Nevada on September 19, 1942 (R. 2). Respondent then filed a petition for modification of the support award, asking for an increase, to which petitioner filed his answer, setting up the Nevada decree and the property settlement contained therein (R. 5, 36). Petitioner also filed a petition for revocation of the support award, based upon the Nevada judgment of divorce and property settlement (R. 7), and a plea in bar, relying thereon.

The Trial Judge dismissed the petition for contempt and the petition for revocation was sustained upon the basis of an exemplified extended record of the Nevada proceedings (R. 580-601). The judge did not permit respondent to introduce evidence pertaining to the lack of jurisdiction of the Nevada Court nor did he permit respondent to make a showing that there had been a violation of Mass. G.L. (Ter. Ed.) c. 208, sec. 39. The Trial Court held the parties were no longer man and wife. Respondent appealed to the Supreme Judicial Court, and the action of the Trial Court was reversed and the case remanded for hearing on the ground that the full faith and credit clause as applied to the present facts did not preclude inquiry into the jurisdiction of the Nevada Court to grant the divorce. The Supreme Judicial Court further held that the fact that respondent was the recipient of the divorce did not estop her from showing that G.L. (Ter. Ed.) c. 208, sec. 39,

which the Court held valid, had been violated. *Coe v. Coe*, 316 Mass. 423.

Upon remand of the cause an extensive hearing was held with respect to the jurisdiction of the Nevada Court, the violation of the statute, as well as other matters.

The evidence at the second trial shows that the parties were married in New York City in 1934, and until their separation in 1939 they resided in Worcester, Massachusetts. In October, 1940, petitioner leased an apartment in New York City, where he made his home (R. 234), taking an occasional trip to inspect his Worcester properties (R. 481-482). These properties consisted of two dwelling houses, in one of which petitioner and respondent had lived as man and wife. Most of his business, which consisted of dealing in securities, was transacted in New York, where in 1939 petitioner caused a securities corporation to be formed to facilitate his business (R. 229-230). In New York petitioner was under the care of an ear specialist, who treated him continuously, in an attempt to remedy his defective hearing (R. 230).

On January 13, 1941, respondent instituted proceedings for separate support in Massachusetts, alleging cruelty and desertion. Later respondent filed a libel for divorce alleging cruelty. Petitioner filed a cross-libel also alleging cruelty. Amendments were filed to both libels alleging adultery. A hearing was held in March, 1942. Respondent withdrew her libel for divorce and proceeded on her separate support petition, which was heard together with petitioner's libel for divorce. On March 25, 1942, the Court held for respondent, awarding her a decree permitting her to live apart for justifiable cause and an award for separate maintenance in the sum of \$35 weekly. The amount of the award was appealed by respondent to the Supreme Judicial Court, and the amount was sustained by that Court. *Coe v. Coe*, 313 Mass. 232.

On June 10, 1942, petitioner, having decided to move from New York City, arrived in Reno, Nevada (R. 114), having been driven there by his secretary, whose mother accompanied them. The secretary and her mother returned to Massachusetts within a few days after their arrival (R. 371). He testified that he intended to make his home in that State for reasons of health (asthma) (R. 245), and to get away from respondent. He was attracted by the liberal tax laws of Nevada (R. 245). He also intended while living in Nevada to obtain a divorce, relying on a cause which occurred in New York City after the March 25, 1942, decree in Massachusetts, intending to reside in Nevada whether he obtained a divorce or not (R. 246-247).

Petitioner filed a complaint for divorce in the District Court for the First Judicial District of the State of Nevada on July 27, 1942, alleging that he was a bona-fide resident of Nevada and basing his claim for divorce upon cruelty and desertion (R. 599-601). Respondent was personally served with notice of the divorce proceeding in Worcester, Massachusetts (R. 43), and, after consultation with local counsel, she went to Nevada at her own expense for the purpose of contesting petitioner's action and to obtain a divorce herself (R. 431). To that end she engaged Nevada counsel, recommended by the local Chamber of Commerce, to which she had applied (R. 433). Respondent had not seen petitioner or been in touch with him from the time of the support proceedings in Massachusetts in March, 1942, until the Nevada hearing on September 19, 1942, except through Nevada counsel for the purpose of the property settlement mentioned below (R. 429). Respondent did not even know petitioner had gone to Reno until service of the citation was made upon her in Worcester (R. 429-430).

Respondent filed a demurrer to petitioner's complaint (R. 496). On September 18, 1942, she filed an answer, raising issues on the merits, admitting petitioner's allega-

tions as to residence (R. 593-594), and a cross-complaint for divorce alleging cruelty. The previous Massachusetts proceedings were not mentioned by respondent. Respondent alleged that the parties had "entered into a written agreement fully and finally settling all property rights of every nature between them, and which said agreement she believes to be fair and reasonable" (R. 594). She prayed for a divorce on the ground of extreme cruelty and asked that the property settlement contract be ratified, adopted and approved by the Nevada Court (R. 594). Under the terms of the property settlement respondent was to receive \$7500 in cash immediately, and \$35 weekly for support, in consideration of which she released all claims against the estate and property of the petitioner, including all other claims for support (R. 515).

The petitions for divorce were heard in Nevada on September 19, 1942. Both parties were present in court and each was represented by separate counsel. Petitioner testified that he had been present in Nevada from June 10, 1942, until July 27, 1942, and that, with the exception of a few days, he had continued to be physically present in Nevada up to the date of the divorce hearing (R. 484-485). He testified that when he came to Nevada he did so with the intention of making that State his home, and that his intention had remained unchanged (R. 585). He further testified that he had opened a bank account in Reno, that he had a safety-deposit box there, that he had registered his automobile in Nevada and taken out a driver's license (R. 585). His testimony as to residence was fully corroborated by witnesses. Petitioner made his home at a ranch near Reno (R. 584).

Respondent testified to the acts of cruelty and admitted having entered into a property settlement, which respondent requested the Court to approve and adopt (R. 585-587). The Nevada Court found on the evidence that it had

jurisdiction of the petitioner and the respondent and of the subject-matter (R. 588). The Court entered a decree of divorce for respondent and ratified, approved, confirmed and adopted the property settlement contract, ordering each of the parties to comply with its terms (R. 489). Neither party took an appeal from the action of the Nevada Court, and its judgment became final.

Petitioner remarried the day respondent received her divorce, and returned to New York with his wife for the purpose of vacating his apartment, the lease of which was shortly to expire (R. 253). He thereafter went to Worcester, Massachusetts, for the purpose of disposing of the two houses which he owned there. He sold the house petitioner and respondent had lived in in Worcester (R. 254), and rented the other one to a tenant. In May, 1943, petitioner then returned to Nevada with his wife, in order to purchase a house in which to live, and other property there (R. 254-255, 575). He was particularly interested in purchasing and operating the ranch at which he had lived previously and entered into negotiations with a view to acquiring it (R. 255).

Shortly after his return to Nevada, petitioner learned that the contempt proceedings had been started against him in Massachusetts (R. 255), and he was advised by his Nevada counsel to return to Massachusetts and defend that action (R. 257, 575). Petitioner and his wife returned in August, 1943 (R. 334). His testimony was corroborated by the deposition of his Nevada counsel, presently Attorney General of that State. The validity of the divorce and property settlement incident thereto under Nevada law was proved in the same manner (R. 564-579). In answer to a cross-interrogatory propounded by respondent directed to petitioner's Nevada counsel, who was also treated by the parties as an expert in Nevada law, it was pointed out that under Nevada law it is not necessary for both

plaintiff and defendant in a divorce action to have resided in the State. The residence and domicile of either in the State for the requisite period is sufficient (R. 572).

Petitioner was advised by counsel upon his return to Massachusetts that the proceedings brought by respondent were likely to continue over a protracted period of time (R. 257-258). Petitioner therefore caused a corporation owned by him to purchase a house in Worcester for him and his wife to reside in, while the present proceedings continued. The instant case was begun in May, 1943, and has not yet been concluded. Petitioner's counsel deemed it essential that petitioner remain in Massachusetts during the period of litigation.

The Trial Court in Massachusetts labeled most of the testimony of the petitioner false, disregarded completely the depositions of the Nevada counsel, and found that petitioner had never intended to change his Massachusetts domicile, despite his residence in New York and Nevada. The Trial Court did not even purport to deal with the issues presented to it at the outset by petitioner (R. 39, 112), *inter alia*, that the decision of the Nevada Court on the question of its jurisdiction over the subject-matter was conclusive and could not be inquired into in the Massachusetts proceedings under the full faith and credit clause. The Trial Judge also found that the Nevada Court did not have personal jurisdiction over either party. He concluded that the divorce was invalid and was in violation of G.L. (Ter. Ed.) c. 208, sec. 39, for the reason that the cause arose in Massachusetts (R. 45-51). He therefore overruled the plea in bar and dismissed the petition for revocation of the support order. The Trial Judge's conclusions with respect to the invalidity of the Nevada divorce proceedings and the violation of the statute were affirmed on appeal taken by petitioner to the Supreme Judicial Court of Massachusetts.

Specification of Errors to be Urged.

The Court below erred—

1. In failing to hold on the evidence that petitioner was domiciled in Nevada at the time respondent obtained her divorce.

2. In failing to hold that the Nevada Court had jurisdiction over the subject-matter of the action.

3. In failing to find that the Nevada judgment was *res judicata* and entitled to full faith and credit with respect to the domicile of petitioner.

4. In failing to hold that the issue of the jurisdiction of the Nevada Court over the subject-matter was *res judicata*.

5. In failing to find that the Nevada judgment was valid in Nevada.

6. In failing to give full faith and credit to the Nevada judgment of divorce.

7. In disregarding the property settlement made pursuant to Nevada statute and incorporated in the Nevada judgment.

8. In holding that G.L. (Ter. Ed.) c. 208, sec. 39, as applied in this case does not violate the full faith and credit clause of the Federal Constitution.

9. In disregarding the rulings of this Court with respect to the burden of proof on the issue of domicile.

10. In affirming the judgment of the Probate Court for the County of Worcester, Massachusetts.

Summary of Argument.

I.

The divorce proceedings in Nevada took place with both parties personally subject to the jurisdiction of the Nevada Court. The issue of the domicile of petitioner in Nevada

was distinctly and necessarily an issue in the case, an issue raised at the outset by petitioner's complaint in his divorce action, and requiring corroborative proof under Nevada law. Respondent had an opportunity, through an attorney of her own choice, to contest that issue. The Nevada Court entered a decree of divorce for respondent, finding on the evidence that petitioner was domiciled in Nevada. That decision was not appealed from and is final. The full faith and credit clause precludes any re-examination in Massachusetts, in a case involving the same issues and evidence, of a question fully and finally determined in a sister State, including all questions of jurisdiction over person and subject-matter. This follows because the parties submitted to the Nevada Court for its determination the question of its jurisdiction to grant the divorce. Both parties having thus had the opportunity to litigate that question, the matter is not open for re-examination elsewhere.

II.

Petitioner contends that, aside from all questions relating to the finality of the Nevada judgment with respect to its jurisdiction over the subject-matter, the Court below erred in holding that petitioner was not domiciled in Nevada at the time the divorce action was there commenced by him. The evidence clearly demonstrates that petitioner had acquired a home in Nevada, a home to which he again returned after settling his affairs in the East. There was no evidence of consent or collusion between the parties with respect to the Nevada divorce. On the contrary, the record reveals an intense hostility existing between petitioner and respondent, one which did not admit of agreement or prearrangement.

Moreover, it is contended that both the Court below and the Trial Court accorded no weight whatsoever to the presumption of validity with respect to the final decree entered by the Nevada Court. Through the entire trial of the cause below, which involved precisely the same issues as the Nevada proceedings, the burden of demonstrating to the Court his Nevada domicile was placed upon petitioner. The proceedings below are consistent only with a view that a Nevada divorce is invalid unless and until proved otherwise. Needless to say, such a theory is completely at war with the rights created by the full faith and credit clause.

III.

The parties entered into a property settlement contract which was incidental to their separation and a prelude to the divorce proceeding. Such contracts are lawful both in Nevada and in Massachusetts. The property settlement was incorporated in the Nevada divorce decree by a Court which found on evidence presented by both parties that it had jurisdiction. A decree dealing solely with support and property rights amounts to nothing more or less than an ordinary money judgment which may be enforced elsewhere as the obligations thereunder accrue. Such a judgment is entitled to full faith and credit, even assuming that the Court did not on the facts have jurisdiction over the divorce action itself.

IV.

G.L. c. 208, sec. 39, of the Massachusetts statutes, as applied to the facts of this case, purports to create an invalid exception to the full faith and credit clause. It attempts to limit the forum for divorce when one spouse is

domiciled in Massachusetts to Massachusetts Courts by providing in effect for the non-recognition of an otherwise valid decree of divorce obtained at the domicile of the other spouse in a sister State. Furthermore, the statute is completely inconsistent with the principle of finality as to questions of jurisdiction evolved by this Court under the full faith and credit clause.

Argument.

I.

THE QUESTION OF THE NEVADA COURT'S JURISDICTION OVER THE SUBJECT-MATTER WAS IMPROPERLY RE-EXAMINED BELOW.

In sharp contrast to the *ex parte* judgment of divorce, this case presents a situation in which the divorce under attack was granted with both parties appearing, filing pleadings, personally present before the Court and testifying in the proceedings. See Radin, The Authenticated Full Faith and Credit Clause, 39 Illinois Law Review, 1. Moreover, this case arose on the "civil side of the court." Many of the considerations for the decisions in the *ex parte* cases disappear and problems not hitherto presented arise.

The record of the Nevada divorce proceedings discloses that the petitioner's complaint alleged a proper domicile in Nevada. Respondent's answer admitted the allegation of domicile, and by her cross-complaint she invoked the protection and aid of the Nevada laws. Although domicile was admitted, the Nevada Court, pursuant to Nevada law (Nevada Compiled Laws, 1929, sec. 9467.02, as amended),*

*This section provides that the Court shall require corroboration of the evidence of residence in all civil cases where the jurisdiction of the Court depends upon the residence of one of the parties to the action.

heard testimony from the petitioner and other witnesses with respect to his domicile in that State, on which it could have and did find as a fact that it had jurisdiction over the subject-matter of the action. Respondent was physically present in court and represented by an attorney she voluntarily selected. She not only had a full and complete opportunity to present her contentions of fact and law, but she was physically present in the Nevada Court and might have testified with respect to all issues raised by the petitioner's complaint. She might have set up the Massachusetts Separation Decree as a possible bar. *Harding v. Harding*, 198 U.S. 317. However, she chose not to. Instead, she returned to Massachusetts and repudiated the divorce she had just obtained. She sought and was permitted to reopen the issue of petitioner's domicile, which had just been adjudicated. Under these circumstances, to hold that the respondent is entitled to a second day in court involving the same issue and the same evidence militates against and renders meaningless the full faith and credit clause and the purpose of uniformity which it was intended to accomplish.

There are few principles of law so basic in our judicial system as the principles underlying the doctrine of *res judicata*. It is a doctrine with an ancient and respectable heritage common to the State and Federal Courts. See Medina, Conclusiveness of Rulings on Jurisdiction, 31 Columbia Law Review, 238. It is a doctrine founded on strong public policy,* designed to prevent litigation by "piece meal," and to put at rest any issue with respect to which a litigant has had his day in court.

* "A judgment is properly a bar on principles of public policy because the peace and order of society, the structure of our judicial system, and the principles of government require that a matter once litigated should not again be drawn into question." Freeman, Judgments (5th ed.) 1318. See also *Jeter v. Hewitt*, 22 How. 352, at 364.

A substantial body of authority has been long developed by this Court with respect to *res judicata* as applied to non-jurisdictional issues, the classical case probably being that of *Cromwell v. County of Sac*, 94 U.S. 351.

It is only, however, within comparatively recent times that the problem of *res judicata* with respect to jurisdictional issues engaged the attention of this Court. An examination of those cases revealed a clear and decisive trend and pattern which, with but a few exceptions not here material, has eliminated the distinctions between jurisdictional and non-jurisdictional issues.

The earliest case to raise the question of application of principles of *res judicata* to jurisdictional issues is that of *Chicago Life Insurance Co. v. Cherry*, 244 U.S. 25 (1917), which held that a refusal by Illinois to permit re-examination of a Tennessee judgment for alleged invalidity of service in Tennessee did not violate due process. The law expressed in the *Cherry* case was held applicable to the Federal Courts in the first *Baldwin* case, 283 U.S. 522, and in the second *Baldwin* case, 287 U.S. 156, the full faith and credit clause was placed squarely behind the effect of a judgment as *res judicata*.

That domicil, despite its nebulous and fictional characteristics, was a jurisdictional fact subject to principles of *res judicata* was established by *Davis v. Davis*, 305 U.S. 32. In that case the husband filed a complaint for divorce in Virginia. The wife was personally served in the District of Columbia, and she appeared to contest the jurisdiction of the Virginia Court. After hearing, the Court found that the husband was domiciled in Virginia and granted him a divorce decree. The husband then moved in the District of Columbia to set aside a decree of limited divorce previously granted the wife, so that he would no longer have to provide support for the wife. The wife again

attacked the jurisdiction of the Virginia Court to grant the divorce. The Court of Appeals for the District declined to enforce the Virginia decree. This Court reversed, holding that the Virginia Court's finding that the husband was domiciled in that State was binding upon the wife in the District of Columbia under the full faith and credit clause, despite the fact that the participation by the wife was limited to a special appearance.

The subsequent cases of *Stoll v. Gottlieb*, 305 U.S. 165; *Tremies v. Sunshine Mining Co.*, 308 U.S. 66, and *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, affirmed the application of principles of *res judicata* to jurisdictional issues. In the last-cited case it was stated by this Court (at p. 403):

“... the principles of *res judicata* apply to questions of jurisdiction as well as to other matters—whether it be jurisdiction of the subject matter or of the parties.”

Neither the Trial Court nor the Court below treated with the conclusive effect of the judgment herein involved on the basis of principles of *res judicata*. The attitude of the Court below is clearly demonstrated by the result it accomplished, and its views may be ascertained by an examination of the language employed in the opinions to attain an invalidation of the judgment under consideration.

It was said by the Court below:

“The circumstances that both parties were temporarily physically in the State of Nevada and before the Court does not alter the fundamental principle that ‘jurisdiction to grant a divorce must be upon the domicile of at least one of the parties.’ ”

There is some suggestion in this conclusion that the language so frequently found in decisions that jurisdiction to grant a divorce is founded on domicile, *Williams, 2d*, 325 U.S. 226, at 229; extends the area of permissible re-examination of divorce judgments. If that were so, no divorce judgment could be final. Yet it is clear that fundamental principles of *res judicata* are as applicable to domicile as a jurisdictional fact as they are to other jurisdictional facts, and that divorce judgments are subject to *res judicata* principles.

The limitation of the full faith and credit clause by the dogma that jurisdiction to grant a valid interstate divorce is founded on domicile is not altered by application of *res judicata* principles. The application of this dogma has hitherto been limited and confined to situations where principles of *res judicata* were not strictly applicable, namely, *ex parte* divorces. The encroachment on the full faith and credit clause permitted in *ex parte* divorces does not indicate an impairment of fundamental conceptions underlying *res judicata*. On the contrary, the trend has been opposed to encroachment on the rule of credit and restricting the permissible areas limiting the application and scope of *res judicata* principles. See Cheatham, *Res Judicata and the Full Faith and Credit Clause*, 44 *Columbia Law Review*, 330; Boskey & Braucher, *Jurisdiction and Collateral Attack*, 40 *Columbia Law Review*, 1006. A very effective answer is contained in *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381. Here it was stated, at page 403:

"The suggestion that the doctrine of *res judicata* does not apply unless the court rendering the judgment had jurisdiction of the cause is sufficiently answered by *Stoll v. Gottlieb*, 305 U. S. 165 and *Treinies v. Sunshine Mining Co.*, 308 U. S. 66."

The Court below sought to avoid the effect of the application of *res judicata* and the credit clause by distinguishing the *Davis* case on the basis of the contest of the jurisdictional issue there involved. The principle of finality as to jurisdiction over subject-matter is not one that is limited to occasions where there is such a contest. Where a person personally subject to the jurisdiction of the Court is given an opportunity to contest its jurisdiction over the subject-matter and does not do so, he is, nevertheless, barred from raising the same questions again elsewhere in an action between the parties involving the same issuer and evidence. This was the principle clearly expressed in the first *Baldwin* case, 283 U.S. 522, where it was said at pages 525-526:

"Public policy dictates that there be an end of litigation; that those who have contested an issue be bound by the result of the contest, and that matters once tried shall be forever settled as between the parties. *We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud,* be thereafter concluded by the judgment of the tribunal to which he submitted his cause.*" (Emphasis supplied.) (And compare *Stoll v. Gottlieb*, 305 U.S. 165; *Heiser v. Woodruff*, 327 U.S. 726, 735, 736; *Angel v. Bullington*, 67 S. Ct. 657 (1947).)

*The kind of fraud applicable is defined and discussed in *Cohen v. Randall*, 137 F. (2d) 441, as being in the nature of coercion, duress or intimidation. Compare *United States v. Throckmorton*, 98 U.S. 61. There is not the slightest indication here that the respondent was coerced into submitting herself to the jurisdiction of the Nevada Court or to leave Massachusetts for the purpose of contesting the petitioner's complaint for divorce.

The test determining finality of a jurisdictional issue under *res judicata* principles is opportunity to be heard, not contest of the issue. In *Heiser v. Woodruff*, *supra*, an issue of fraud raised by the pleadings but unsupported by evidence was held to have been litigated for the purpose of *res judicata*.

In *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, the parties and the Trial Court assumed the validity of a statute giving the Court jurisdiction over municipal debt readjustment without contesting its validity. The statute was later declared unconstitutional in another case. A new case was then brought on the municipal bonds, which had been dealt with in the earlier decisions. This Court held that the judgment rendered pursuant to the statute could not be collaterally attacked for want of jurisdiction over the subject-matter, stating, at page 378:

"The remaining question is simply whether respondents, having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end.' "

No reason has been suggested by the Court below to justify the absence of a contest as a persuasive consideration for the abandonment of the claim of credit for the judgment here involved on principles of *res judicata*. No sound reason suggests itself as requiring a contest in order to further the highly desirable result of attaining uniformity

with reference to determinations of status. Certainly any requirement that divorce proceedings must be conducted in the atmosphere of a legal prize ring would add nothing to the dignity of such a divorce, and is not the requirement of the laws of either Nevada or Massachusetts.

Under article IV, section 1, of the Constitution of the United States and the Act of Congress implementing it, 28 U.S.C. sec. 687, each final judgment is entitled to the same faith and credit in other States to which it is given in the State which rendered it. There is no question but that the judgment in the present case is valid and binding on the parties in Nevada. All due process requirements have been met. Respondent may not now collaterally attack the judgment in Nevada on the ground that petitioner was not domiciled in that State. *Canfer v. District Court*, 49 Nev. 18.

Evidence of Nevada laws and the effect of the decree rendered thereunder was introduced by petitioner in support of his contentions. There was no contrary evidence presented, so that the effect of the judgment is unquestioned.

Respondent did not appeal from the decree or otherwise directly attack it. She not only had full and complete opportunity to contest all jurisdictional issues, but had her day in the Nevada Court. She was the successful party. The issue of domicil was raised by petitioner's complaint and supported by testimony. Such matters are *res judicata*. *Weiskeyer v. Weiskeyer*, 54 Nev. 76. As distinguished from *ex parte* cases where compliance with the purely local laws of the divorce-granting State may operate to deprive the non-appearing spouse of full opportunity to be heard, the effect claimed for the judgment here is one where the judgment has met with every test of "justice and fair dealing." Under these circumstances, the Nevada judgment is one entitled to full faith and credit

in Massachusetts. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430. See Restatement, Conflicts, sec. 450; *Williams*, 1st, 317 U.S. 287, at 306. Massachusetts, therefore, improperly reopened the question of petitioner's Nevada domicil. Husserl, Some Reflections on *Williams v. North Carolina*, 32 Virginia Law Review, 555, note 51, at page 568. Peaslee, *Ex Parte Divorce*, 28 Harvard Law Review, 457, at 472.

Other State Courts, when dealing with the extra-territorial effect to be given to sister State judgments of divorce, have virtually unanimously recognized and given effect to *res judicata* principles, and, on circumstances even less persuasive than those in this case, have recognized the validity of the divorce. *Scafidi v. Scafidi*, 57 N.Y.S. (2d) 273. *Cole v. Cole*, 96 N.J. Eq. 206. *Teidemann v. Teidemann*, 158 N.Y.S. 851; aff'd 225 N.Y. 709 (demurrer filed to complaint for divorce). *Glaser v. Glaser*, 276 N.Y. 296 (appearance). *Bloedorn v. Bloedorn*, 76 F. (2d) 812 (App. D.C.) (personal appearance and litigation on demurrer). *Norris v. Norris*, 200 Minn. 246. See note (1941), 54 Harvard Law Review, 1060. In *Senor v. Senor*, 65 N.Y.S. (2d) 603 (1946), the plaintiff sought to repudiate a divorce decree and property settlement contract she obtained in Nevada, the husband having appeared in the Nevada proceeding. The New York Court held the Nevada decree final, and not subject to collateral attack.

The same conclusion was raised by the New York Court involving collateral attack on an Idaho judgment of divorce and property settlement agreement in *Miller v. Miller*, 65 N.Y.S. (2d) 696, where it was stated:

"It has been repeatedly held in our courts that when both parties voluntarily appear in a foreign court and the jurisdictional facts are there adjudicated by that court, and that court has heard and determined the

issues, our courts will not permit the jurisdiction of that court to be collaterally attacked here [cases cited]."

There is some suggestion by the Court below that the interests of Massachusetts had been violated. The "legitimate interest" of a State in the marital status of its domiciliaries is, of course, a factor in determining the interstate validity of a judgment. It is submitted, however, that the claim of State interests must be viewed in the light of the greater Federal interest secured by the full faith and credit clause to promote uniformity in its social as well as economic aspects. The precise nature of the State interests here involved were not defined below. The unique position Massachusetts has chosen to occupy with reference to sister State judgments of divorce strongly suggests that the claim of State interest has been adopted and altered to guise a claim of power based on purely political and long-discredited notions of States' rights.

In *ex parte* cases a State may conceivably have a legitimate interest in affording its non-participating domiciliaries an opportunity to be heard, particularly with reference to a status of the importance of marriage, and with reference to the incidents of marriage, such as support and custody of children. In an *ex parte* case, re-examination of a sister State judgment of divorce would be affording to the non-participating domiciliary an opportunity to be heard that may have been denied to such domiciliary even though the requirements of procedural due process had been complied with in the divorce granting State. Such opportunity may be denied by reason of the expense involved, the difficulty of transporting witnesses, etc. Where, however, participation has taken place, the legitimate interest of the State of the forum is weakened and reaches the vanishing point where, as here, the litigant seeking col-

lateral attack has had her full day in the Court of the divorce-granting State, in fact having secured the divorce. Since Massachusetts is not a direct party to these proceedings, no legitimate interest of Massachusetts is discernible which is served by permitting the respondent a second day in court to relitigate an issue heard and adjudged in Nevada under the circumstances here involved.

The fact that the respondent filed an answer with her cross-complaint in the Nevada Court admitting under oath the petitioner's jurisdictional allegations was a circumstance which impelled the Court below to characterize the Nevada proceedings as collusive, and to hold applicable the decision of *Andrews v. Andrews*, 188 U.S. 14 (R. 621, 622).

At the outset it should be noted that the issue of collusion was not raised by the pleadings in the instant case, and accordingly was not in issue. No evidence was offered on this point, and the only evidence having any bearing on this issue expressly negatives a conclusion of collusion. Without prearrangement, the respondent went to Nevada for the purpose of obtaining counsel to contest the petitioner's complaint of divorce, and to obtain a divorce herself. The Trial Court did not, in his report of material facts, report collusion as a factor in his findings.

The circumstances that the respondent admitted the allegations of jurisdiction did not require non-recognition of the Nevada judgment. Whatever may be the result in a case where collusion, as it has been defined in many cases (see Annotation, 109 A.L.R. 832), is expressly raised and is supported by testimony, the effect of the jurisdictional admissions in no way altered the requirements of the Nevada law requiring corroboration, and testimony both direct and by way of corroboration was offered in support of the jurisdictional allegations.* The conclusion reached

*Even Massachusetts local law does not require such corroboration. *Friedrich v. Friedrich*, 230 Mass. 59.

by the Court below lends emphasis to the position already taken that the Nevada judgment was not even accorded some faith and credit, but was considered presumptively invalid. That Nevada did not regard the proceedings as collusive is clear, else the Nevada Court would not have entered judgment. The disregard of the fact, by the Massachusetts Courts, that the Nevada judgment was entered on testimony and was not merely based on jurisdictional admissions was a disregard sharply criticized by this Court in *Harding v. Harding*, 198 U.S. 317, where it was stated, at page 332:

"The assumption that the Illinois decree was a consent decree, merely registering an agreement of the parties, disregards the form of that decree, and cannot be indulged in without failing to give effect to the very face of the decree, which adjudged that the separation of the wife from the husband was without her fault. This was an express finding by the court, and one which the law required to be judicially made."

The case of *Andrews v. Andrews*, 188 U.S. 14, is not in point. That involved a dispute in Massachusetts between two persons claiming to be the lawful wife of the decedent, each requesting appointment as his administratrix. The second wife relied upon a divorce obtained by the husband and his subsequent marriage to her. The first wife maintained the divorce was invalid. The husband obtained his divorce by proceedings in South Dakota. He alleged his domicile in that State; his wife, after notice, appeared by counsel and answered, denying his domicile. The case was settled thereafter, and the wife by written agreement expressly consented to the granting of a divorce to her husband in the following terms (188 U.S. at page 17):

"Fourth. Upon the execution of such papers, M. F. Dickinson, Jr., is authorized in my name to consent

to the granting of divorce for desertion in the South Dakota court."

Her appearance was later withdrawn. Immediately after he obtained the divorce, the husband returned to Massachusetts, where he lived until his death.

The only issue necessary to the determination of the *Andrews* case was the effect to be given to a divorce decree rendered upon the express consent of the parties (see *Tiedemann v. Tiedemann*, 158 N.Y.S. 851; aff'd 225 N.Y. 709). The authority of the *Andrews* case, on which this Court was divided, appears to be considerably shaken by the *Baldwin*, *Chicot County* and *Davis* cases, *supra*. See Strahorn, Jr., & Reiblich, *The Haddock Case Overruled—the Future of Interstate Divorce*, 7 Maryland Law Review, 29, 65. In any event, the expressions contained in the opinion of the *Andrews* case with reference to the effect of an appearance ought not to be wrested from their context, and should be confined to applicable situations where an appearance is filed for the purpose of securing a judgment rendered solely on the express consent of the parties. As so construed, the *Andrews* case is clearly distinguishable from this case, and is not in conflict with the contentions urged by the petitioner.* Although admittedly a spouse may not authorize the entry of a divorce decree as though it were an action on a judgment note, the evidence here does not warrant the conclusion that the judgment under consideration was founded upon express

*Since the instant case involved the physical presence of both parties before the Nevada Court, the effect of the mere filing of an appearance as *res judicata* is felt to be an issue not here directly involved. It is suggested, however, that it may well be that such a limited participation may not constitute a day in court, and that the States may properly decide under their local laws the effect to be given to such limited participation. This subject-matter is ably discussed in *Peri v. Groves*, 50 N.Y.S. (2d) 300.

consent of the parties. See, generally, Jacobs, Attack on Decrees of Divorce, 34 Michigan Law Review, 749, at page 803.

There exists another ground of distinction between the *Andrews* case and the present case, in that the parties to the divorce proceedings differed from those before the Massachusetts Court and this Court. There was not the privity between the parties in the *Andrews* case generally considered necessary for the application of *res judicata*. See Restatement, Judgments, sec. 79. The South Dakota divorce was an operative fact considered by this Court; but even had it been adversary, it may not have been conclusive on the jurisdictional facts decided or which might have been decided therein. Compare *Williams v. North Carolina*, 325 U.S. 226, 230. Hence, the *Davis, Chicot County* and similar cases may not have been applicable even if the teaching of those cases had been available to this Court when the *Andrews* case was decided.

By a curious process of inverse reasoning, the Court below felt constrained to disregard the effect claimed for the Neyada judgment on principles of estoppel despite the respondent's admission of the jurisdictional allegations. Like *res judicata*, principles of estoppel are founded on public policy. The virtual unanimity of authority in other States does not permit the successful party to collaterally attack a sister State divorce even where rendered *ex parte*.^{*} Whatever this Court may decide as to the interstate validity of an *ex parte* divorce, where repudiation is

^{*}*Elliott v. Wohlfrom*, 55 Cal. 384; *Ellis v. White*, 61 Iowa, 644; *Bledsoe v. Seaman*, 77 Kan. 679; *Judson v. Judson*, 171 Mich. 185; *Ferry v. Ferry*, 9 Wash. 239; *McIntyre v. McIntyre*, 211 N.C. 698; *Guggenheim v. Wahl*, 203 N.Y. 390; *Brown v. Brown*, 272 N.Y.S. 877; *Re Robottom*, 288 N.Y.S. 397; *Fisher v. Fisher*, 295 N.Y.S. 451; *Blume v. Blume*, 6 N.Y.S. (2d) 516; *Stevely v. Stevely*, 4 N.Y.S. (2d) 69; *Ferry v. Trop Laundry Co.*, 238 Fed. 867; *Re Ellis*, 55 Minn. 401; *Cope v. Cope*, 123 N.J. Eq. 190.

sought by the successful party, it would seem clear that where, as here, the respondent voluntarily admitted the petitioner's jurisdictional allegations, and was the successful party, fundamental principles of estoppel preclude her from relitigating the issue of domicile in Massachusetts. She would have been estopped to do so even directly in Nevada. *Calvert v. Calvert*, 122 Pac. (2d) 426. If, then, under the law of Nevada, the effect is to estop the respondent, a judgment so obtained is entitled to the same effect in Massachusetts under the full faith and credit clause. With reference to the application of principles of estoppel to judgments of divorce, it was said by this Court in *Bates v. Bodie*, 245 U.S. 520, at page 525:

"The principle [of estoppel by judgment] would seem to have special application to a judgment for divorce and alimony."

See also *Laing v. Rigney*, 160 U.S. 531; and compare *Horowitz v. Horowitz*, 58 R.I. 396; *Curry v. Curry*, 79 F. (2d) 172; *Schacht v. Schacht*, 54 N.Y.S. (2d) 515.

The result of refusing to apply the principles of estoppel has led Massachusetts into the anomalous position of denying relief to a spouse who utilized his day in court in good faith in a sister State Court such as in the *Davis* case, but throwing wide the doors of its Courts to a spouse whose basis for collateral attack is predicated on the claim that he utilized his day in a sister State Court for the purpose of defrauding and deceiving the sister State Court into an assumption of jurisdiction. Such a result is not consonant with reason, policy or fundamental law, and is in conflict with the intention and purpose of the full faith and credit clause. Hitherto the considerations which had been deemed adequate to justify a relaxation of the full faith and credit clause to permit re-examination of sister

State judgments have been considerations of policy intended as a shield for the protection of the non-participating spouse. Those considerations are wholly without application to a situation where, as here, the party seeking repudiation of the Nevada proceeding for lack of jurisdiction had sought for and obtained relief in the Nevada Court on the ground that that Court did have the power to grant the relief prayed for.

The judgment here involved not only complied with procedural due process, but had the effect of finality with reference to the jurisdictional fact of domicile. It met with every test of justice and fair dealings. It therefore was valid in Nevada, and the effect claimed for it gave to it that interstate validity guaranteed under the full faith and credit clause. Its re-examination below was error.

II.

THE COURT BELOW FAILED TO GIVE APPROPRIATE WEIGHT TO THE JURISDICTIONAL FINDINGS OF THE NEVADA COURT.

Apart from the question of disregard of fundamental law with respect to finality of jurisdictional issues, the cumbersome and involved record in this case acutely accentuates what is believed to be an unfortunate trend in Massachusetts to ignore fundamental standards of proof with respect to sister State divorces. As already indicated, while the directive of the full faith and credit clause has been relaxed in *ex parte* cases to permit a party defending against a foreign judgment to challenge the jurisdiction of the Court rendering that judgment, there are certain requirements to be met in doing so. The judgment relied upon by the party setting it up is entitled to full faith and credit unless and until the party seeking repudiation has met the burden of proving, by appropriate standards of proof, that the foreign Court did not have jurisdic-

tion to render it. "The burden of undermining the verity which the Nevada decree imports rests heavily upon the assailant." *Williams v. North Carolina*, 325 U.S. 226, 233-234. This principle was reaffirmed in the *Esenwein* case, 325 U.S. 279; cf. *Cheever v. Wilson*, 9 Wall. 108; and has been adopted and applied by the Courts of other States. *Davis v. Davis*, 162 Pac. (2d) 62 (Cal. 1945). *Herman v. Herman*, 57 N.Y.S. (2d) 614 (1945). *Re Schwartzapel's Estate*, 53 N.Y.S. (2d) 638 (1945).

In the instant case petitioner was deprived by the Court below of the criteria and standards of proof established by this Court for collaterally attacking a judgment based upon domicil. The Court below has persisted in the erroneous view stated earlier in *Bowditch v. Bowditch*, 314 Mass. 410, 415, 416, that "one who relies upon a foreign divorce must not only plead and prove it, but must also prove his bona fide domicil at the time the divorce relied upon was granted in the foreign State . . ." (See the first opinion below, R. 612.) Compare this view with that set forth in the second *Williams* case, quoted above. Neither the Trial Court nor the Court below gave the slightest deference to the Nevada decree. In fact, the burden of proving the validity of the Nevada decree was placed upon petitioner, who was not even given the slightest benefit of a presumption as to its validity. The Court below has, apparently, proceeded on the theory that, since it was a Nevada divorce, it was *ipso facto* invalid; this, despite the fact that uncontroverted evidence of Nevada law demonstrates that the divorce is valid in that State (R. 564-579).

The evidence as to petitioner's domicil, much of it contradicted, does not support a finding that the divorce was collusive or that petitioner was not domiciled in Nevada. This Court is not being asked to undertake to re-examine the subsidiary facts or re-try the case, but

merely to ascertain whether the respondent has complied with the standard of proof this Court has established.*

The issue of collusion was not before the Court below. It was not an issue raised by the pleadings, nor does the record disclose any contention by the respondent that the divorce was collusive. The Trial Judge did not report that the divorce was collusive, or indicate any circumstances warranting such a finding.

The complete legal history of these embattled parties, including some 625 pages of record in this case, reveals a bitterness and conflict which is completely at odds with the intimation of the Court below that the Nevada divorce became collusive in nature.

Petitioner went to Nevada from New York. Respondent testified that she had no knowledge of his presence there until she was personally served with notice of the Nevada proceeding. There had been no communication between the parties after the separation case in Massachusetts in March, 1942. Upon receipt of service, respondent consulted her local counsel as to a proper course of action. At her own expense, she then traveled to Nevada, in order, in her own words, "to seek counsel and to get a divorce . . . to defend myself against Mr. Coe's action for divorce" (R. 431). Such conduct on the part of respondent hardly indicates a friendly arrangement for divorce. Upon her arrival in Reno, respondent engaged an attorney recommended to her by the local Chamber of Commerce. Thereafter her attorney represented her throughout the Nevada proceeding. Respondent filed a demurrer and an answer on the merits to peti-

* "In a case where it is asserted that a person has been deprived by a State Court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made." *Craig v. Harney*, U.S. , decided May 19, 1947; 67 S. Ct. 1249.

tioner's complaint, and a cross-complaint for divorce. Thereafter a property settlement was arrived at, which exceeded, in amount, what the Massachusetts Court had awarded her in her support action. Upon her testimony as to petitioner's acts of cruelty towards her and petitioner's evidence as to his residence in Nevada, she obtained a divorce decree. The fact that the attorneys representing both parties managed to arrive at a property settlement hardly shows collusion. *Ham v. Twombly*, 181 Mass. 170, 173-174. If that were sufficient, many, if not most, of the divorces granted today would be invalid. There is absolutely nothing in the record to show that there was an agreement as to the divorce or any sort of arrangement between the parties with respect to it.* Indeed, the only affirmative evidence expressly excludes such finding. (See Deposition of Allan Bible, cross-interrogatory No. 15 (R. 568), and answer (R. 578).)

Turning to the issue of petitioner's domicile in Nevada, the evidence in support of the Nevada Court's finding is overwhelming, and subsequent events additionally support that finding. Petitioner testified that he intended to live in Nevada for reasons of health, since he suffered from severe asthma, and to get away from respondent; he was attracted by the liberal tax laws of Nevada also. He stated that he intended, while living in Nevada, to obtain a divorce relying upon a cause which occurred in New York after the March 25, 1942, decree in Massachusetts, intending to live in Nevada whether he obtained a divorce or not. Petitioner was physically present in Nevada, and his intention to make it his home concurred with his presence. He had no ties or connections with his former home in Worcester, other than some real estate which he owned

*The Nevada Court entered judgment with complete awareness of the pleadings and the property settlement agreement.

there and visited occasionally. At the time petitioner left for Nevada he was living in New York in an apartment he had rented in October, 1940. Petitioner did not work in Worcester or elsewhere, since his wealth was largely inherited and was maintained in the form of securities. Thus, when petitioner arrived in Nevada, he had no close ties to Massachusetts; most of his more important connections had been in New York. In Nevada petitioner lived at a ranch house; maintained a car which he registered in Nevada; took out a driver's license; opened a bank account and rented a safe-deposit box, all of which reflect his ties to his new domicile. Moreover, petitioner did not live in Nevada merely the minimum period of six weeks, obtain his divorce, and then depart quickly. Instead, he remained over three months. He married his former secretary in Nevada when respondent obtained her divorce. Petitioner and his present wife then traveled to New York, where petitioner vacated his apartment. They then went to Worcester temporarily while petitioner completed the winding up of his affairs there. He sold his former house and rented out another property he owned. Thereafter petitioner and his wife returned to Nevada to live.* He entered into negotiations to buy a house to live in with his present wife, and to purchase and operate the ranch at which he had previously resided. Petitioner's subsequent return to Nevada is significant. This latter return, while not, of course, before the Nevada Court, was presented to the Trial Court below, and throws striking light on the nature of petitioner's earlier intentions with respect to his Nevada domicile. Petitioner and his wife returned to Worcester, Massachusetts, in August, 1943, only upon advice of Nevada counsel, in order to defend the present suit which

*The testimony with reference to domicile was much stronger before the Massachusetts Court than it was before the Nevada Court.

had been commenced by respondent. They have since lived there for the same reason.

In the face of the above evidence, and despite an express finding of petitioner's domicile by the Nevada Court, the Trial Court held that petitioner still retained his Massachusetts domicile, and this finding was sustained on appeal. An examination of the record shows that the Trial Judge was determined to hold the Nevada divorce invalid, regardless of the evidence or the weight of the evidence.*

*No attempt will be made to discuss the highly extraordinary circumstances under which the Trial Judge was substituted for the original judge who heard this case (R. 29-32), nor the collateral issues deemed material on the question of domicile. Highly illuminating as regards a judicial attitude toward Nevada divorces are the characterizations of the petitioner's contentions as "foolish" (R. 551); the Trial Judge's self-instruction that he had a right "to make inquiries from persons whether they have certain knowledge that might affect the conduct of a trial or the conduct of a person in the courtroom, if he sees fit" (R. 187); his refusal to allow general exceptions and expedite trial because petitioner's counsel were not "entitled to it" (R. 344), or because petitioner's counsel "may have some trouble in determining where to draw the line" (R. 386-387). The Trial Judge's concept of domicile may be ascertained by reference to his report of material facts, in which the factors he considered as material were nothing more than a disbelief of testimony, which in turn were predicated on the presence in the courtroom of an excitable spectator, and the mistaken and corrected testimony of the petitioner in February of 1945 as to when he made a certain visit in 1942. Whatever lip service may have been accorded to the concept and application of the issue of domicile, the record in this case makes prophetic the language in *Waldo v. Waldo*, 52 Mich. 94, where it was said with reference to domicile:

"The final result with all its important consequences might come at last to depend upon the idiosyncrasies or acquired peculiarities of the triers."

The attitude, view, concepts and findings of the Trial Judge with reference to the issue of domicile were adopted and affirmed by the Court below. While the Court below has recognized that "A day or an hour, it has been said, will suffice for the acquisition of a domicile" (*Winans v. Winans*, 205 Mass. 388, 391), yet, in apply-

Since the evidence did not support his findings, he chose the convenient device of "disbelieving" it. He magnified trivial inconsistencies in petitioner's testimony, readily explainable by reason of the fact that petitioner is quite deaf. An example of the reckless findings of fact made by the Trial Court is one to the effect that the Nevada Court did not have jurisdiction over the persons of the parties (R. 50). Not only was such a finding completely erroneous, but it was clearly an attempt to convert a constitutional claim into a finding of fact in order to thwart review by this Court. See *Williams v. North Carolina*, 325 U.S. 226, 236. It reveals the attitude, adopted by both the Trial and Appellate Courts, toward Nevada divorces. The Trial Court made many similar findings in its effort to avoid review here. Most such findings were affirmed. On a record and findings such as these, for this Court to accept the facts found by the Courts below at their face value is to deny to petitioner a remedy for one of the basic evils which the full faith and credit clause was designed to correct.

III.

EVEN IF NEITHER PARTY WAS DOMICILED IN NEVADA, AND THE QUESTION OF DOMICIL WAS PROPERLY OPEN IN MASSACHUSETTS, THE PART OF THE NEVADA DECREE DEALING WITH SUPPORT AND PROPERTY RIGHTS IS ENTITLED TO RECOGNITION IN MASSACHUSETTS.

The Nevada judgment at the instance of respondent dealt with the question of support and the property rights of the parties. The decree of the Court approved and ing the rule to extra-state divorces, a trial judge's finding of acquisition of a Nevada domicile was held to be plainly wrong, despite an absence from this Commonwealth of over two years. *Rubinstein v. Rubinstein*, 319 Mass. 568. The trend of the law in Massachusetts had been profoundly influenced by *Smith v. Smith*, 13 Gray, 209, discussed *infra*.

adopted a contract entered into by the parties finally settling those issues. The Court has personal jurisdiction over both parties. Therefore it had the power to enter a valid personal judgment. *Pennoyer v. Neff*, 95 U.S. 714. The distinction between the jurisdiction of a State to grant a divorce and to affect property rights in so far as the full faith and credit clause is concerned was recognized in *Williams v. North-Carolina*, 317 U.S. 287, 293, note 4, but the fact that a distinction between the termination of the marital status and the disposition of support and property rights was made at all is significant. Prior to that case, it was generally thought that a valid divorce finally disposed of all aspects of the marital relationship, but the problem of the "separable" divorce when granted *ex parte* has now arisen. Thus, it may be that there are different jurisdictional requirements, under the full faith and credit clause, for a State to grant a divorce and finally to determine support and property rights. For a divorce entitled to recognition under the full faith and credit clause, the domicile of at least one party is necessary, but, for recognition of a decree dealing with support and property rights, only personal jurisdiction over the parties should be required as with any money judgment. See, generally, Husserl, Some Reflections on *Williams v. North Carolina* (1946), 32 *Virginia Law Review*, 555, 566-567; Bingham, Song of Sixpence (1943), 29 *Cornell Law Quarterly*, 1, 14; Strahorn, Jr., & Reiblich, The Haddock Case Overruled, 7 *Maryland Law Review*, 29, 60; Taintor, Is Haddock Dead? (1943), 15 *Miss. L.J.* 165, 186-187.

Support proceedings and the like need not accompany an action for divorce, since there are independent causes of action. *Bray v. Landergren*, 161 Va. 699. *Williamson v. Williamson*, 183 Ky. 435. Thus a number of States now recognize an *ex parte* foreign divorce obtained by a spouse at a new domicile except as to the support and property

incidents of the foreign decree. *Price v. Ruggles*, 244 Wis. 187. *Proctor v. Proctor*, 215 Ill. 275. Cf. *Norris v. Norris*, 200 Minn. 246.

In *Esenwein v. Commonwealth, ex rel. Esenwein*, 325 U.S. 279, Justice Douglas in his opinion pointed out the basic difference between jurisdiction to grant a divorce and jurisdiction to deal with support, in so far as the full faith and credit clause is concerned, saying, at page 282:

"In other words, it is not apparent that the spouse who obtained the decree can defeat an action for maintenance or support in another State by showing that he was domiciled in the State which awarded him the divorce decree. It is one thing if the spouse from whom the decree of divorce is obtained appears or is personally served. See *Yarborough v. Yarborough*, 290 U. S. 202; *Davis v. Davis*, 305 U. S. 32. But I am not convinced that in absence of an appearance or personal service the decree need be given full faith and credit when it comes to maintenance or support of the other spouse or the children. See *Pennoyer v. Neff*, 95 U. S. 714. . . ."

In the instant case there was admittedly jurisdiction over the persons of the parties in Nevada. A decree was finally entered disposing of support and property rights. Therefore the portion of the decree dealing with such matters is entitled to full faith and credit in Massachusetts, regardless of the local policy of that State. Cf. *Yarborough v. Yarborough*, 290 U.S. 202; *Fauntleroy v. Lum*, 210 U.S. 230; *Christmas v. Russell*, 5 Wall. 290.

To superimpose upon the present requirement of personal jurisdiction a rule that no State but that of the domicile of a spouse may have jurisdiction for the purpose of the full faith and credit clause to deal with support and property rights would make such actions local in charac-

ter, and would impose needless hardship in cases where personal service cannot be obtained at either domicile.

The Court below completely ignored this question, although it was pressed by petitioner. Thus, in the instant case, the Nevada judgment, made with both parties before the Court, having finally determined questions of support and property, is held void, thereby depriving petitioner of the benefits of the Nevada judgment which finally disposed of such issues. Cf. *Yarborough v. Yarborough*, *supra*.

IV.

MASSACHUSETTS G.L. (TER. ED.) c. 208, SEC. 39, AS APPLIED IN THIS CASE, DEPRIVES PETITIONER OF RIGHTS GUARANTEED HIM BY THE FULL FAITH AND CREDIT CLAUSE.

The application of the provision of G.L. c. 208, sec. 39, has added much confusion to the ill-defined concept of public policy in Massachusetts divorce law. Massachusetts has attempted to justify by legislative enactment what it could not have done by justifiable decision under the full faith and credit clause.*

The first clause of Massachusetts G.L. (Ter. Ed.) c. 208, sec. 39, conforms substantially with the requirements of

*Some explanation for the unusual attitude for the Court below may be found in the historical background of this statute. The earliest legislation of the Commonwealth, indicating its policy towards foreign divorce, was first enacted on May 1, 1836. Rev. St. c. 76, sec. 39, declared that—

"When any inhabitant of this state shall go into any other state or country, in order to obtain a divorce for any cause, which had occurred here, and whilst the parties resided here, or for any cause, which would not authorize a divorce, by the laws of this state, a divorce so obtained shall be of no force or effect in this state."

Section 40 of this statute provided that "In all other cases, a divorce decreed, in any other state or country, according to the law of the place, by a court having jurisdiction of the cause and of

the full faith and credit clause, except for the provision that the foreign Court must have jurisdiction over both parties as well as the cause. But cf. *Williams v. North Carolina*, 317 U.S. 287. But the second clause of the statute, particularly as applied to this case, purports to create an unconstitutional exception to the clause. The statute provides that, if an inhabitant of Massachusetts goes into another State to obtain a divorce for a cause occurring while he was in Massachusetts or for a cause not authorized under Massachusetts law, a divorce so obtained is void in Massachusetts. Thus, suppose H. separates from

both the parties, shall be valid and effectual in this state." See *Lyon v. Lyon*, 2 Gray, 367, 369.

It is obvious that this legislation would today be considered unconstitutional. Section 39 did not purport to deal with any jurisdictional issues. If the divorce escaped the prohibition of section 39, issues of jurisdiction would then arise under section 40. But if the divorce was determined within the scope of section 39, it would be void if the judgment complied with all the jurisdictional requirements of section 40. This statute was construed and applied in the case of *Smith v. Smith*, 13 Gray, 209. In that case an Indiana divorce was held void as violating the statute despite the fact that the only evidence before the Massachusetts Court was the Indiana record. Instead of according the Indiana record the credit it was entitled to, the Massachusetts Court inferred that the fact of obtaining the divorce in Indiana created a "violent presumption" that that was one of the prohibited purposes and the statute was therefore applicable. The jurisdictional issues were not discussed in the *Smith* case.

The provisions of the revised statutes above cited were re-enacted without change by G.S. c. 107, secs. 54, 55.

The statutory policy of Massachusetts in its present form was declared in R.L. c. 152, sec. 35, and may be found in G.L. (Ter. Ed.) c. 208, sec. 39. Not one case dealing with the subject-matter herein involved has noted any change in the legislative policy of this Commonwealth. The law declared and applied in the *Smith* case has been perpetuated since, despite the legislative reversal of that case and despite the legislative intention to conform to changing trends and concepts by emphasis on jurisdiction and the compulsion required by the full faith and credit clause as being also a matter of policy.

his wife, W., and moves to Nevada, where he makes his new home. W. is an "inhabitant" of Massachusetts. H. files a suit for divorce in Nevada, serving W. in Massachusetts. W. thereupon comes to Nevada, contests H.'s divorce, files a cross-complaint based on a cause occurring in Massachusetts, or not authorized by Massachusetts law, and, after the divorce is granted, returns to her home in Massachusetts. Under this statute, W.'s divorce is void in that State even though the Nevada Court had jurisdiction over the subject-matter by reason of the domicile in Nevada of H. The hypothetical case given above approximates the present facts. It is not unusual for a divorce to be granted upon the cross-complaint of a spouse not domiciled in the State. See *Cole v. Cole*, *supra*.

Nevada statutes expressly permit such procedure. Nevada Compiled Laws, 1929, sec. 9460, as amended (R. 573, 578). All jurisdictional requirements are met and under the first *Williams* case the divorce is entitled to recognition in all States. But the Massachusetts statute nevertheless purports to make the divorce void in that State. It seeks to impose the local divorce policy of Massachusetts on other States regardless of the jurisdiction of such other States to grant a valid divorce decree. This Massachusetts may not do under article IV, section 1, of the Constitution. *Christmas v. Russell*, 5 Wall. 290. *Fauntleroy v. Lum*, 210 U.S. 230. In the *Christmas* case the State of Mississippi sought to bar actions on foreign judgments if the original cause upon which the judgment was based was barred by the local statute of limitations and if the defendant was a resident of Mississippi at the time the original action was commenced. Suit was brought upon a Kentucky judgment which was within the statute. The Court held that statute invalid, saying (at page 301):

"Instead of being a statute of limitations in any sense known to the law, the provision, in legal effect,

is but an attempt to give operation to the statute of limitations of that State in all the other States of the Union by denying the efficacy of any judgment recovered in another State against a citizen of Mississippi for any cause of action which was barred in her tribunals under that law."

In the *Fauntleroy* case, too, a judgment was procured in Missouri on a cause of action which was not enforceable in Mississippi, where the cause of action accrued. This Court nevertheless held that Mississippi was bound to recognize the Missouri judgment since it was binding in the State which rendered it, even though it could not have been obtained originally in Mississippi.

In the present case the Massachusetts Court seeks to accomplish by means of the statute what Mississippi was not permitted to do in the above case, namely, disregard a valid judgment in order to promote local divorce policies.

In *Andrews v. Andrews, supra*, the same statute was involved and on the facts there presented its validity was sustained. It has been pointed out in the discussion of the *Andrews* case, above, that the facts in the *Andrews* case are clearly distinguishable and principles of *res judicata* were inapplicable. Cf. *Williams v. North Carolina*, 325 U.S. 226; *Davis v. Davis, supra*; *Chicot County v. Baxter State Bank, supra*. The result in that case would have been the same without the statute. In the present case the judgment involved did not merely register an agreement of the parties. Moreover, the Massachusetts statute makes no allowance for the operation of the principle of *res judicata* as to questions of jurisdiction, as seen in the instant case and in *Davis v. Davis, supra*.

Here, then, the Massachusetts statute is applied to the Nevada judgment in complete disregard of the fact that the judgment is conclusive both with respect to the merits and

with respect to the domicile of petitioner. Such an application completely disregards the rights secured to petitioner by article IV, section 1, of the Constitution.

Conclusion.

Time-tested, established and recognized principles of law gave to the Nevada judgment the effect of finality with reference both to the divorce and to the property settlement. The considerations present in *ex parte* judgments of divorce which have been held to justify re-examination of sister State judgments as a limitation of the full faith and credit clause are not applicable to the facts at bar.

An extension of the limitation permitted in *ex parte* cases to embrace the facts in this case not only would result in further departure from the Constitution and settled principles of law, but would for all practical purposes make ineffective the full faith and credit clause and defeat the purpose of uniformity it was designed to accomplish.

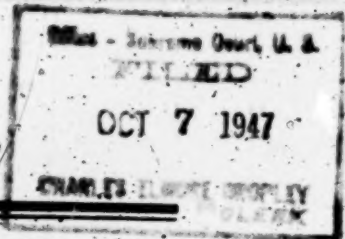
Unless the judgment below is reversed, foreign judgments will be subject to uncertainties even greater than those which led this Court to overrule *Haddock v. Haddock*, 201 U.S. 562. Particularly with reference to divorce it is highly desirable that greater certainty and stability be achieved than more uncertainty, confusion and hardship. In order to achieve that certainty and stability and in order to obtain a return to the Constitution, it is urged that the judgment below should be reversed.

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Of Counsel:
GEORGE H. MASON.

FILE COPY

No. 37



IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

MARTIN V. B. COE, *Petitioner,*

v.

KATHERINE C. COE.

**On Writ of Certiorari to the Probate Court for the County
of Worcester, Commonwealth of Massachusetts.**

BRIEF FOR THE RESPONDENT.

**FRANCIS M. SHEA,
WARNER W. GARDNER,**

Of Counsel:

NUNZIATO FUSARO.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947

No. 37

MARTIN V. B. COE, *Petitioner,*

v.

KATHERINE C. COE.

On Writ of Certiorari to the Probate Court for the County
of Worcester, Commonwealth of Massachusetts.

BRIEF FOR THE RESPONDENT.

Opinions Below.

The report of material facts by the Probate Court for Worcester County (R. 45-51) is not reported. The opinion of the Supreme Judicial Court of Massachusetts on the first appeal in this proceeding (R. 612-616) is reported in 316 Mass. 423, and the opinion in the second appeal (R. 616-627) in 1946 Mass. Adv. Sheets 1127.

Jurisdiction.

The opinion of the Supreme Judicial Court of Massachusetts was entered on October 30, 1946 (R. 627). The record does not show the date of entry of the rescript but the petition for a writ of certiorari was filed on January 28, 1947. The jurisdiction of this Court rests on Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

Petitioner shortly after dismissal of his Massachusetts libel for divorce filed a Nevada divorce suit while Massachusetts separation proceedings were pending on appeal. Respondent after service by mail proceeded to Nevada and filed a cross complaint upon which a divorce decree was entered. Petitioner immediately went through a marriage ceremony in Nevada with another resident of Massachusetts, and all parties returned to Massachusetts. Respondent petitioned the Massachusetts courts for enforcement of the original decree and for increased support and maintenance. Petitioner asked revocation of the original decree for support and maintenance. The questions presented are:

1. Whether the Massachusetts courts properly found that petitioner, as well as respondent, has at all times been domiciled in Massachusetts.
2. Whether the full faith and credit clause and statute require that the Massachusetts courts give conclusive effect to the Nevada decree divorcing Massachusetts domiciliaries.

Constitutional Provisions and Status Involved.

U. S. Constitution, Article IV, Sec. 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings

of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Act of May 26, 1790, 1 Stat. 112, as amended, R. S. sec. 905, U. S. C. 687:

"The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Massachusetts G. L. (Ter. Ed.), c. 208, sec. 39:

"A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

Nevada Compiled Laws, 1941 Supplement, Section 9460:

Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the district court of any county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, or in which the parties last cohabited, or if plaintiff shall have re-

sided six weeks in the state before suit be brought, for the following causes, or any other causes provided by law:

Sixth—Extreme cruelty in either party.

Unless the cause of action shall have accrued within the county while plaintiff and defendant were actually domiciled therein, no court shall have jurisdiction to grant a divorce unless either the plaintiff or the defendant shall have been resident of the state for a period of not less than six weeks preceding the commencement of the action. The complaint in any such suit may state the grounds of divorce in the words of the statute, but either party may demand a bill of particulars as in other civil cases. The judgment or decree of divorce granted under the provisions of this act shall be a final decree.

Statement.

Petitioner was born in Worcester, Massachusetts, and has continued to reside there (R. 46). He married respondent, also a resident of Worcester, in New York City on May 15, 1934 (R. 45-46, 103). They returned to Worcester and resided at 6 Boynton Street, which was owned by petitioner, until 1942 (R. 46, 101, 104). Petitioner had considerable means and until 1939 he and respondent were accustomed to spend about nine months of the year in travel (R. 46, 447-449). Their only residence, however, was Worcester; there petitioner owned two houses and a tract of land, maintained his bank accounts and post office box, registered his automobiles, and paid his taxes (R. 46, 122, 127-128, 131, 156, 166).

Petitioner became friendly with one Dawn Allen in 1939 after which his relations with respondent deteriorated (R. 46, 341-348, 352-353, 363, 450). From October 1940 until October 1942 he maintained a three-room apartment in New York which he ordinarily used during the week, re-

turning to Worcester over the weekend (R. 46, 124-125, 127, 230). Petitioner, before the Nevada divorce proceedings, testified that New York was merely a temporary residence, used for the purpose of obtaining regular treatment for his hearing, and that his home remained in Worcester (R. 184-185, 196, 199, 524). In the present proceedings he testified both to that effect (R. 101, 105, 107) and that he had intended from 1940 to 1942 to make New York his home (R. 103-104, 120, 234). The trial judge found that petitioner's domicile remained in Worcester (R. 46).¹

Respondent on January 13, 1942, filed a petition for separate support in the Probate Court for the County of Worcester, while petitioner filed a libel for divorce. The cases were heard together. On March 25, 1942, the libel was dismissed and respondent's petition was granted, the decree awarding her \$35 a week until further order of the court. Respondent appealed, complaining of the amount of the award. The decree was affirmed on February 25, 1943. *Coe v. Coe*, 313 Mass. 232 (R. 46).

Petitioner testified that respondent in April, 1942, came to New York, attempted to enter his apartment, and threatened to kill him if she saw him with another woman (R. 244). ~~Petitioner~~ ^{Respondent} and her sister testified that she was not in New York and did not leave Worcester in April, 1942 (R. 428-429, 522-523). The trial judge found petitioner's testimony to be false (R. 49-50).

¹ The judge commented on petitioner's contradictory statements (R. 48). It is also significant that petitioner during this period paid poll taxes in Worcester (R. 122, 156-157); maintained and paid all accounts for his two Worcester houses (R. 127-128), continued his bank accounts and post office box there (R. 159-161); used his Worcester address in correspondence (R. 160-162), and gave his address as Worcester when incorporating a personal corporation (R. 339, 607). The contrary evidence is simply that he also maintained bank accounts in New York, where he kept the bulk of his current funds (R. 236), had done jury duty there (R. 232), had one of his automobiles registered in New York (R. 131), and had in 1939 incorporated a New York securities corporation (R. 229-230).

Petitioner left New York on May 31 and, accompanied by Dawn Allen and her mother, arrived in Reno, Nevada, on June 10; he consulted an attorney, to whom his Worcester attorney had written, about a divorce from respondent on June 11, the next day. (R. 46-47, 173, 272). Six weeks and one day later he swore to the papers in a divorce proceeding and a decree of divorce was entered on September 19, 1942 (R. 47). On the same day he was married to Dawn (R. 48). Two days later he left Reno, returned to New York, gave up his apartment there, and after 5 days in New York returned to Worcester, where he has since resided (R. 50, 167-168, 253-254).

Petitioner in February, 1945, nevertheless testified that he has ever since June, 1942, been domiciled in and a *bona fide* resident of Nevada. His testimony and that of Dawn, with an occasional contradiction noted in the margin, is: In April, 1942, he told his counsel he would like to move to Nevada to help his asthma and to take advantage of the liberal tax laws; counsel said he might as well get a divorce while there but advised he would have to live there indefinitely for this purpose (R. 245-246). Counsel supplied him with a divorce memorandum for Nevada divorce counsel; this he took with him, but not, however, with any purpose of obtaining a divorce² (R. 280-282, 601-604). Dawn and her mother spent the last few days of May in petitioner's New York apartment; they drove to Nevada with him because her mother wanted the trip and because Dawn could help petitioner in his business (R. 276-278, 354.) Petitioner had never heard that only six weeks residence was necessary for a Nevada divorce decree; the travelers never mentioned any divorce proceeding, and the first Dawn heard of a divorce was when she accompanied petitioner to counsel's office on the day after their arrival; neither she nor petitioner had any intention to marry each other

² He nevertheless testified at one point that he went to Nevada for a divorce (R. 115) and at another that he went on advice of counsel (R. 173).

(R. 118-119, 274-275, 368-372).³ Dawn and her mother returned to New York on June 12 or 13, petitioner buying the tickets and giving her \$100 (R. 250-251, 361, 390).

Petitioner had his automobile registered in Nevada and opened a bank account and took out a post office box in Reno (R. 252). He moved to the Del Monte Ranch on June 17 (R. 252). He had, it was testified, made no arrangements with Dawn for her return (R. 372-374).⁴ Dawn nevertheless returned to Reno either on July 18 or in late August; petitioner's Nevada counsel advised her to go to Lake Tahoe, California (R. 176, 374-375). After one or two days in Reno, she left for Lake Tahoe; petitioner paid her expenses there, drove over for dinner twice, received a visit from her in Reno, and after a short visit in Los Angeles spent several days in July or August at Lake Tahoe visiting Dawn or friends⁵ (R. 176, 252-253, 270, 374-376).

When respondent received by mail copies of petitioner's divorce summons and complaint, she decided to go to Reno to defend against petitioner's action and to obtain her own divorce; she arrived there on August 25, 1942 (R. 430-433). She was referred to an attorney by the Reno Chamber of Commerce; he advised her on August 28 not to contest petitioner's action for a divorce because her funds, some \$1500, were insufficient for a trial, which might take weeks and would undoubtedly end in a decree of divorce in any

³ Petitioner at one point went so far as to deny discussing a divorce even with Nevada counsel; during the course of 10 consecutive answers he insisted that he simply gave the attorney the divorce memorandum prepared by Massachusetts counsel and did not discuss a divorce at all (R. 284; cf. 288).

o ⁴ At another point petitioner admitted arranging for her return to Nevada, but denied having done so in order to marry her (R. 292-293).

⁵ Petitioner at one point said he had never left Nevada between June and September of 1942 (R. 167). There is also conflicting testimony as to whether petitioner, as he testified without qualification (R. 176), paid Dawn's Tahoe expenses or whether, as she testified, she paid them out of money given her by petitioner in October, 1940, to cover hospital expenses then incurred (R. 389).

event (R. 433-436). In early September he phoned respondent to say that he had arranged a settlement with petitioner by which she would receive \$7500 and \$35 a week (R. 436). Respondent, considering the amount too small, refused to sign the papers. She was, however, confined to her bed with illness and her attorney, in daily telephone calls, was persistent. Accordingly, on his advice that there was no alternative, she signed "some papers", without explanation of their contents, on September 16 (R. 436-438, 589-592).

On September 19 respondent's attorney filed an answer and a cross-complaint, which admitted petitioner's allegation of residence in Nevada, prayed a divorce by respondent from petitioner, and set up the September 16 agreement (R. 593-594). Petitioner replied the same day, setting up the agreement and praying a divorce (R. 595-596). The trial was held the same day and was perfunctory; two witnesses testified briefly that they had seen petitioner frequently since June, petitioner testified that he intended to make Nevada his home, and respondent testified that petitioner had been cruel to her (R. 582-587). A decree, granting respondent a divorce and confirming the agreement, was immediately entered (R. 588-589). Neither the parties nor their counsel disclosed to the Nevada court that the Massachusetts court had a few months before dismissed petitioner's libel for divorce, that it had awarded separate support to respondent, or that an appeal from this action was then awaiting argument in the Supreme Judicial Court of Massachusetts.

Respondent on September 19, received from her counsel petitioner's checks for \$7500; when she asked how much she owed her counsel he replied that it had been taken care of (R. 442-443). Petitioner on September 19 paid respondent's counsel \$1,000 (Opp. R. 604).

Dawn was in Reno on September 19 and immediately after the decree she and petitioner went through a marriage ceremony conducted by the divorce judge and with divorce

counsel serving as best man; she and petitioner testified that this marriage had neither been discussed nor contemplated prior to the decree (R. 48, 274-275, 292-293, 336, 369).

On September 21 the appeal from the Massachusetts Probate Court decree of March 25 was argued in the Supreme Judicial Court. It affirmed on February 25, 1943. *Coe v. Coe*, 313 Mass. 232.

Petitioner and Dawn returned to Worcester on October 1, 1942. They resided at 6 Boynton Street, one of petitioner's houses, until February, 1944, when petitioner through a personal realty corporation purchased a more pretentious home at 30 Forest Street where he and Dawn have since lived (R. 101, 107, 168, 258, 302-303, 333-334). Petitioner sold 6 Boynton Street in June 1944; he still owns a house at 2 Boynton Street and acreage outside of town (R. 109, 129, 166). The trial judge found that they were residents of and domiciled in Worcester (R. 50):

Petitioner and Dawn nevertheless testified that they were still domiciled in Nevada. They went to Worcester in October 1942 only in order to sell petitioner's property (R. 254); they viewed 6 Boynton Street as a hotel, not as a home (R. 381); they purchased 30 Forest Street as an investment, not as a residence (R. 302-303).⁶ They place reliance upon a trip they made to Nevada in 1943. They stayed at the Del Monte Ranch for a month from the middle of June to the middle of July (R. 169-170). One reason for the trip was to confer with their Nevada counsel (R. 169). Another was to consider the purchase of property in Nevada, and they made an offer on the Del Monte Ranch (R. 254-255). They returned to Worcester, petitioner testified, on the ad-

⁶ Petitioner, however, maintains his bank accounts, post office box and auto registration in Worcester (R. 159, 160-161, 181, 384); he pays his poll tax as well as other taxes there (R. 127-8, 156-157); both he and Dawn have consistently described their residence as in Worcester in formal papers unconnected with the divorce proceedings (R. 301, 215, 299-301, 382, 384-385, 610); and petitioner in this very trial testified that he lived at 30 Forest Street (R. 99).

vice of Nevada counsel in order to defend their interests in respondent's proceedings against petitioner in the Massachusetts courts, which had been commenced a month before they left on their visit to Nevada' (R. 256-258).

Petitioner, on the advice of counsel, had not by the time of trial paid respondent any money accruing, whether under the Massachusetts decree or the Nevada agreement and decree, after September 19, 1942 (R. 48, 394). Respondent on May 22, 1943, filed against petitioner a petition for contempt of the Massachusetts decree for separate maintenance (R. 1) and on August 30, 1943, a petition for modification of that decree (R. 5-6). Respondent on September 7, 1943, filed a petition for revocation of that decree (R. 7-8).

The Probate Court on October 21, 1943, entered a decree in favor of petitioner, revoking the decree of March 25, 1942, for the separate maintenance of respondent; this was on the ground that petitioner and respondent were no longer husband and wife (R. 16). On appeal, the decree was reversed on June 5, 1944, because the trial court had refused to hear evidence to show that the parties were never domiciled in Nevada and that the Nevada court accordingly was without jurisdiction (R. 612-616). *Coe v. Coe*, 316 Mass. 423.

The cause came on for further hearing in February, 1945, and consumed 11 days of hearing in that month (R. 82-562). On May 21, 1945, the court decreed: (a) petitioner should pay respondent \$5,000 forthwith and \$100 a week thereafter (R. 40); (b) the petition for contempt is dismissed (R. 41); (c) the petition for revocation is dismissed (R. 40-41). The trial judge on July 5, 1945, filed a report of material facts (R. 45-51). On appeal, the Supreme Judicial Court, so far as here relevant, on October 30, 1946, affirmed the decree dismissing the petition for

¹ Respondent's petition for contempt was filed May 22, 1943 (R. 1) and petitioner's counsel made special appearance on July 3, 1943 (R. 3-4). The record does not show when the petition was served. Petitioner and Dawn later in the trial testified that they left for Nevada in May (R. 254, 333-334).

revocation (R. 619-624, 627) and reversed, apparently for further hearing as to petitioner's financial condition, the decree modifying the 1942 decree for separate maintenance (R. 624-626, 627). Petitioner on January 28, 1947, filed a petition for a writ of certiorari which was granted by this Court on March 3, 1947.

Summary of Argument.

I.

Respondent concedes that the case is properly before the Court, recognizing that (A) the judgment of the Supreme Judicial Court of Massachusetts is final, and (B) the Federal question was decided by the State Court and is decisive of the controversy.

II.

In *Williams v. North Carolina*, 317 U. S. 287, this Court held that a Nevada divorce obtained by a Nevada domiciliary must be recognized in other states, and in *Williams v. North Carolina*, 325 U. S. 226, that an *ex parte* Nevada divorce obtained by one not domiciled in Nevada need not be recognized elsewhere. The opinion in *Williams II* sharply suggests that, if the jurisdictional fact of domicile is not actually litigated, the Nevada decree need not be recognized elsewhere even though both parties were before the Nevada court. That, in any case, was the square decision of this Court in *Andrews v. Andrews*, 188 U. S. 14, where the Court sustained the same Massachusetts statute as is here involved, and in *German Savings Society v. Dormitzer*, 192 U. S. 125.

III.

A. The same result would be required even if the issue were still open, for the Nevada court was without jurisdiction to decree a divorce. (1) Petitioner has never been domiciled in Nevada, and (2) a court has divorce jurisdiction only if at least one of the parties is a domiciliary.

(3) It is, indeed, doubtful that the Nevada Court has in fact found petitioner to be domiciled there and the full faith and credit question is not necessarily reached in this case.

B. The full faith and credit requirements do not in any event make the Nevada decree conclusive upon the Massachusetts courts.

(1) It is thoroughly settled, both generally and with respect to decrees of divorce, that full faith and credit need not be given a judgment which is in excess of jurisdiction.

(2) The only substantial issue before the Court is whether, by virtue of respondent's appearance in the Nevada proceedings, the issue of Nevada jurisdiction is itself made conclusive upon the Massachusetts courts.

(a) The courts have reached divergent results in considering whether the doctrine of *res judicata* applies to the jurisdictional basis of a domestic judgment when both parties were before the court. (b) The principles of comity are, however, clear at least to this extent, that the jurisdiction of the foreign court is always open to attack. (c) The full faith and credit requirements do not convert a sister-state judgment into a domestic judgment. They simply serve to crystallize the principles of comity and to make the decree conclusive rather than *prima facie* evidence of the merits. This Court has at all times and consistently recognized that jurisdictional issues are not concluded by full faith and credit unless they have actually been litigated in the original suit. The full faith and credit requirements compel recognition of judgment which the court had power to enter but neither the purpose of the clause, the interest of either State involved, nor any decision of this Court require that erroneous and non-litigated issues of jurisdiction be made conclusive on other states.

(3) The result thus indicated by the technical rules of law is made doubly compelling when it be remembered that

the Court faces here the question whether Massachusetts can fix her own policy "in matters of most intimate concern." *Williams II*, 231.

C. (1) This Court does not have before it the vexing problem whether divorces should be easy or difficult to obtain. It faces a far simpler question, whether Massachusetts or Nevada should solve this problem for Massachusetts residents.

(2) The Nevada decree, if Massachusetts were compelled to accept it, would make meaningless the statutory and judicial policy which ever since 1836 has forbidden Massachusetts residents to divorce themselves for Massachusetts causes in the courts of another jurisdiction.

(3) The interference with Massachusetts policy is well exemplified by this case: the Nevada divorce was awarded while the Massachusetts litigation was in progress; it was granted on evidence which would have been insufficient in Massachusetts; and, if conclusive upon Massachusetts, would prevent her from making proper provision for a Massachusetts resident left without means of support as the result of the Nevada destruction of a marriage between Massachusetts residents.

(4) Against these compelling grounds of public policy there must be balanced only the inconvenience, already accepted by this Court in *Williams II*, that petitioner and Dawn have got themselves into a situation where they are probably legally married in Nevada and are not in Massachusetts.

Argument.

I.

THE CASE IS PROPERLY BEFORE THE COURT.

A. The Judgment is Final.

On March 25, 1942, a decree was entered for the separate support of respondent. The Massachusetts courts in the present litigation have disposed of three separate proceedings subsequent to that decree: (a) The trial court dismissed respondent's petition for contempt of the 1942 decree (R. 1, 41) and no appeal was taken. (b) The trial court and the appellate court dismissed petitioner's petition for revocation of the 1942 decree (R. 7-8, 40-41, 619-624); the writ of certiorari of this Court is directed to this action. (c) The trial court modified the 1942 decree to provide increased support for respondent (R. 40) and the appellate court seems plainly to have returned this action for a rehearing by the trial court (R. 627), since it found the trial judge to have been justified in finding respondent's financial needs to have increased but in error in his estimate of petitioner's financial worth (R. 626).

The petition for a writ of certiorari sought review of only the action dismissing the petition for revocation. Respondent does not question that the judgment below, so far as it is here involved, was final.

It was, in the first place, the final disposition of a separate proceeding, and was so viewed by the court below (see R. 616, 617, 624, 627). See *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8, 14; *Clark v. Williard*, 292 U. S. 112, 117-118.

Even, moreover, if the three petitions before the trial court were viewed as a single proceeding, all that remains under the decree below is a new determination of the amount petitioner should pay for the support of respondent. The federal question under the full faith and credit clause is finally determined, and the subsequent proceedings in the trial court can neither change that decision, add new fed-

eral questions, nor place the case in such a posture that its decision is unnecessary. The decision below is, therefore, final under the cases which hold that the direction of subsequent proceedings for an accounting or receivership or to determine the amount of damages do not diminish the finality of the State court decision so far as concerns review of this Court under Section 237 of the Judicial Code (28 U. S. C. sec. 344). See *Knox Loan Assn. v. Phillips*, 300 U. S. 194, 197-198; *Carondelet Canal Co. v. Louisiana*, 233 U. S. 362, 371-373; *Belmont Bridge v. Wheeling Bridge*, 138 U. S. 287, 290.

B. The Federal Question is Decisive.

The Supreme Judicial Court decided the federal question of full faith and credit on the second appeal in this litigation (R. 613-614) and by plain implication reaffirmed this decision upon the third appeal (R. 621-622). Respondent grants that the rulings as to state law discussed in the opinion are by way of disposal of cumulative arguments of petitioner and are not alternative grounds of decision, so that the federal question was necessarily decided.

Nor does respondent urge that her basic controversy with petitioner can be settled without decision of the federal question. The Nevada divorce decree, if conclusive on Massachusetts, ends the power of the Massachusetts Probate Court to award petitioner support and maintenance. *Rosa v. Rosa*, 296 Mass. 271, 5 N. E. 2d 417; *Cohen v. Cohen*, 319 Mass. 31, 34; 64 N. E. 2d 689. The full faith and credit issue is, therefore, decisive. See *Esenwein v. Commonwealth*, 325 U. S. 279, 280.⁸

⁸ We suggest below (pp. 26-27) that the Nevada finding of domicile was so inconclusive that the full faith and credit issue was not squarely before this Court for decision. But that issue was raised and decided below, and whether or not the Nevada decree is in truth sufficient to raise a full faith and credit issue is itself a federal question proper for decision by this Court.

II.

THE QUESTION IS SETTLED BY CONTROLLING
AUTHORITY.

The facts, as found by the Massachusetts courts, present a very simple issue. Petitioner, while an appeal from a Massachusetts decree for the separate support of respondent was pending, went to Nevada to get a divorce. He never became a *bona fide* resident of Nevada, but remained a domiciliary of Massachusetts. Respondent, when the divorce papers were served upon her by mail, also went to Nevada and, after reaching a reluctant agreement with petitioner, appeared in the Nevada proceeding and filed a cross-complaint. The Nevada court, in a non-adversary proceeding, then proceeded to divorce Massachusetts residents for Massachusetts causes, and granted a decree upon the cross-complaint. We believe it clear that the Federal Constitution does not compel Massachusetts, contrary to its statutory policy of one hundred and eleven years standing, to surrender its control of Massachusetts marriages to whichever of the other states and territories happens at the time to have the most lax laws upon divorce.

This Court in recent Terms has given much attention to the force which may be given the bargain-counter divorce by the full faith and credit clause and statute. In *Williams v. North Carolina*, 317 U. S. 287, it held that a Nevada divorce must be recognized in other States when granted at the suit of a Nevada domiciliary. *Williams v. North Carolina*, 325 U. S. 226, on the other hand, held that the Nevada court, for want of jurisdiction, could not conclude the home State when neither party to the divorce was a *bona fide* domiciliary of Nevada. The finding of the Nevada court as to its own jurisdiction, while casting the burden of proof upon the assailant of its decree, was held, in the absence of a Nevada contest, not to bar the courts of the home State from re-examining the jurisdictional fact of domicile. The same result was reached in *Esenwein v. Commonwealth*, 325

U. S. 279; it was concurred in by the three Justices who dissented from *Williams II* because *Esenwein* involved a support decree rather than a prosecution for bigamy, and did not present an inescapable conflict between Nevada and the home State over the marital status of the parties.

This case presents one variation from *Williams II* and *Esenwein*: respondent appeared in the Nevada proceedings and filed an answer and cross-complaint, upon which the divorce was decreed, and which contained a routine admission of petitioner's allegation of Nevada residence (R. 593, 599). Had respondent put petitioner's domicile in issue, and had the fact been decided against her, she would have been concluded by the Nevada decree. *Davis v. Davis*, 305 U. S. 32. The Nevada court, in short, had personal jurisdiction over those non-resident parties; respondent had an opportunity to contest the jurisdictional fact of domicile; but that fact was not put in issue and respondent, more from bewilderment than from collusion (*supra*, pp. 7-8), conceded that the Nevada court had jurisdiction when in truth it was without power to act.

The effect of the Nevada decree in circumstances such as these was left open in *Williams II* and *Esenwein*. One may draw conflicting inferences from the language of the opinions, but the majority of the Court has indicated with some clarity that the jurisdictional fact of domicile is not made conclusive merely because the parties could have put it in issue. Thus, in *Williams II* (all quotations 325 U. S. at 230) the Court said that jurisdictional questions "after a contest . . . cannot be relitigated as between the parties." "The State of domiciliary origin," it continued, "should not be bound by an unfounded, even if not collusive, recital in the record of a court of another State." The Court noted in the margin that "We have not here a situation where a State disregards the adjudication of another State on the issue of domicile squarely litigated in a truly adversary proceeding." Against these strong *indicia* can be placed only the fact that at one point in *Williams II* the Court noted, by way of contrast to that case, that "it is one

thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication." Even this phrasing may largely be reconciled with the preceding quotations if the Court assumed, as we believe it did, that litigious advantage would be taken of the opportunity. Again, the discussion by the Court of the interest of the domiciliary States "in the protection of their social institutions" and of their policies on "matters of most intimate concern" (325 U. S. at 231-232) would have been beside the point had these matters been protected only against the fraud of one party and not also against that of two. Finally, in *Esenwein* the Court in its statement of facts did not consider it sufficiently material to indicate whether or not the Nevada court, in its erroneous finding of jurisdiction, had personal jurisdiction over both the parties (325 U. S. at 279-280).⁹

It is, in truth, unnecessary to weigh in so fine a balance the language of the opinions in *Williams II* and *Esenwein*. Granting that those cases, in themselves, do not foreclose petitioner, the precise issue was decided by this Court 44 years ago, in a case the authority of which has never been questioned. *Andrews v. Andrews*, 188 U. S. 14. There the husband in the summer of 1891 left Massachusetts, where both he and his wife were domiciled, and went to South Dakota to get a divorce. He filed suit after a few months'

⁹ Justices Black and Douglas, who dissented from *Williams II* but concurred in *Esenwein*, it must be recognized, indicated a view that an opportunity to contest the jurisdictional fact of domicile may be all that is needed to protect the Nevada decree against attack. "It is one thing if the spouse from whom the divorce is obtained appears or is personally served. See *Yarborough v. Yarborough*, 290 U. S. 202; *Davis v. Davis*, 305 U. S. 32. But I am not convinced that in absence of an appearance or personal service the decree need be given full faith and credit when it comes to maintenance or support of the other spouse or the children." (325 U. S. at 282.) *Davis*, it will be noted, involved square litigation of the jurisdictional fact while *Yarborough* did not present any substantial issue as to the jurisdiction of the divorce court (290 U. S. at 205, cf. 211-212).

residence; the wife appeared and by her answer put in issue both the *bona fides* of his South Dakota residence and his allegation of marital fault. She withdrew her answer after a property agreement in April, 1892, and a divorce was decreed in May, 1892, whereupon the husband returned to Massachusetts. He remarried in 1893 and died in 1897 and the validity of his divorce arose upon the competing claims of the two wives to administer his estate. This Court held the South Dakota divorce invalid for want of jurisdiction because of the absence of South Dakota domicile.

The facts in the case at bar, so far as they differ at all, make a stronger case for Massachusetts.¹⁰ In *Andrews* the South Dakota court was at least put on notice of the issue of domicile, but not the Nevada court here. In *Andrews* the husband was in the divorce State for almost a year, but here for only three months. In *Andrews* the wife delayed her attack upon the decree for five years, and until after the husband's death, while here for only eight months. In *Andrews*, in contrast to *Coe*, the husband's remarriage was no part of the divorce plan and there were two children by the second marriage (188 U. S. at 17).

The opinion of this Court in the *Andrews* case is completely applicable to the case at bar. The Court started with the Massachusetts statute which (with minor and irrelevant changes in phrasing) is controlling here: "if an inhabitant of this Commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here, while the parties resided here, . . . a divorce so obtained shall be of no force or effect within this Commonwealth." The issue was whether the full faith and credit clause made this statute unconstitutional. The Court said (188 U. S. at 31, 32, 41):

¹⁰ Only two points of difference appear which could possibly be argued to make Massachusetts' case weaker in *Coe* than in *Andrews*: respondent's answer was not withdrawn and the divorce happened to be granted on her cross-complaint rather than on petitioner's complaint. Neither circumstance is in any way material to the decision, or to the wording of the opinion, in *Andrews*.

It follows that the statute in question was but the exercise of an essential attribute of government, to dispute the possession of which would be to deny the authority of the State of Massachusetts to legislate over a subject inherently domestic in its nature and upon which the existence of civilized society depends.

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It cannot be doubted that if a State may not forbid the enforcement within its borders of a decree of divorce procured by its own citizens who, whilst retaining their domicile in the prohibiting State, have gone into another State to procure a divorce in fraud of the laws of the domicile, that the existence of all efficacious power on the subject of divorce will be at an end.

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The principle dominating the subject is that the marriage relation is so interwoven with public policy that the consent of the parties is impotent to dissolve it contrary to the law of the domicile. . . . the appearance of one or both of the parties to a divorce proceeding could not suffice to confer jurisdiction over the subject matter where it was wanting because of the absence of domicile within the State

The Court pointed out that this result was compelled by *Bell v. Bell*, 181 U. S. 175, and *Streitwolf v. Streitwolf*, 181 U. S. 179, where the Court had ruled that the full faith and credit clause did not compel recognition of a foreign divorce decree obtained by a plaintiff who had no *bona fide* domicile within the jurisdiction of the divorce court. It was unimportant, he said, that those cases involved an *ex parte* divorce proceeding: "the rulings . . . were predicated upon the proposition that jurisdiction over the subject matter depended upon domicile, and without such domicile there was no authority to decree a divorce." (188 U. S. at 39.)

Chief Justice Fuller, and Justices Harlan, Brown and McKenna joined in the opinion of Mr. Justice White; Justices Brewer, Shiras and Peckham dissented without opinion. Mr. Justice Holmes took no part but had written the opinion of the Massachusetts court, which was affirmed by

the Supreme Court. *Andrews v. Andrews*, 176 Mass. 92. There Chief Justice Holmes, after discussing the effect of the wife's appearance in the South Dakota proceeding, concluded (176 Mass. at 96) that "the Commonwealth having intervened by legislation, the appellant gets the benefit of it irrespective of any merits of her own."

The *Andrews* ruling was followed in *German Savings Society v. Dormitzer*, 192 U. S. 125, which, too, is determinative of the case at bar. There the mortgagee's interest in the decedent's property could be sustained against the children only if the decedent were validly divorced prior to the mortgage. He had moved to Washington from Kansas but returned to Kansas, at about the time his wife was moving from the state, and filed suit for divorce. Personal service on the wife was made in California; she appeared and entered a general denial. The Kansas court entered a decree of divorce which the Washington court held invalid for want of jurisdiction. (R. 294, 296, 347-349, No. 104, Oct. Term, 1903.) Mr. Justice Holmes, speaking for this Court, said:

"It is too late now to deny the right collaterally to impeach a decree of divorce made in another State, by proof that it had no jurisdiction, even when the record purports to show jurisdiction and the appearance of the other party. *Andrews v. Andrews*, 188 U. S. 14, 39

The *Andrews* and *Dormitzer* cases have many times been accepted by this Court as sound and controlling law, most recently in *Williams II* (325 U. S. at 229). See *Winston v. Winston*, 189 U. S. 506; both majority and dissenting opinions in *Haddock v. Haddock*, 201 U. S. 562, 583, 608; *Fauntleroy v. Lum*, 210 U. S. 230, 237; *Burbank v. Ernst*, 232 U. S. 162, 163; *Chicago Life Ins. Co. v. Cherry*, 244 U. S. 25, 29; *Roche v. McDonald*, 275 U. S. 449, 454. *Andrews* applies squarely here and requires that the judgment of the Supreme Judicial Court of Massachusetts be affirmed.

The following pages show that this Court should affirm the judgment below even if the narrow issue presented were one of first impression, and not one long since settled by this Court.

III. MASSACHUSETTS IS NOT CONCLUDED BY THE NEVADA DIVORCE DECREE.

A. *The Nevada Court Had No Jurisdiction to Decree a Divorce.*

The application of the full faith and credit clause to this case depends upon one proposition of fact, that the parties have at all relevant times been domiciled in Massachusetts, and upon one proposition of law, that the Nevada courts have jurisdiction to grant a divorce only if at least one spouse is domiciled in Nevada.

1. *Petitioner has always been domiciled in Massachusetts.* There is no denial that respondent has, ever since 1927, been domiciled in Massachusetts (R. 46). The only Nevada domicil claimed is that of petitioner.

The trial court found that petitioner "never intended to change his residence from Massachusetts," and "that his claim of residence in Nevada was a fraud" (R. 49), since he "went to Nevada to seek a divorce" and did not have "a bona fide residence in Nevada according to the law of Nevada" (R. 50). The Supreme Judicial Court held that "the judge, to say the least, was not plainly wrong" in finding that petitioner went to Nevada to get a divorce and that his finding that petitioner was domiciled in Massachusetts "was not plainly wrong" (R. 623, 621)¹¹ There can be no

¹¹ Both courts gave full consideration to the Nevada decree but neither happened to use a verbal formula by which the courts explained in terms the obvious course of their reasoning: (a) the Nevada decree and record, standing alone, would show a Nevada domicil, but (b) the evidence in the Massachusetts proceedings was sufficient to overcome the *prima facie* force of the Nevada decree. Any conceivable doubt on this score would be removed by its earlier opinion sending the case back to hear evidence to impeach the Nevada decree. "The mere fact that the Nevada judgment of

thought, in view of the facts of this case, that the findings were a pretext by the Massachusetts courts to evade their obligations under the Constitution, or that they were anything but fairly and reasonably made. This Court, accordingly, will not re-examine those facts but will accept the findings of the Massachusetts courts. *Burbank v. Ernst*, 232 U. S. 162, 164; *Williams v. North Carolina*, 325 U. S. 226, 233, 236-237; *Esemwein v. Commonwealth*, 325 U. S. 279, 281.

Even if, moreover, this Court were itself to plunge into the record it would inevitably reach the same conclusion as did the Massachusetts courts. We need not argue the facts set out in the Statement. Petitioner sought to escape conclusions so obvious as to be inescapable through a tale which would strike the most credulous as fanciful, and accumulated in the course of his testimony a remarkable number of contradictions (*supra*, pp. 4-10). The *prima facie* weight of the Nevada decree, indeed, was overcome equally by the facts contradicting the decree and by petitioner's testimony in support of that decree.

2. *Nevada can grant a divorce only if at least one party is domiciled there.* Under the statutes and decisions of Nevada, a divorce can be granted only if the plaintiff is a *bona fide* resident of Nevada; only if his physical presence within the State for the statutory period "was accompanied by the intent to make Nevada his home, and to remain here permanently, or at least for an indefinite time." *Lamb v. Lamb*, 57 Nev. 421, 65 P. 2d 872, 875. See, also, *Fleming v. Fleming*, 36 Nev. 135, 134 Pac. 445, *Presson v. Presson*, 38 Nev. 203, 147 Pac. 1081; *Aspinwall v. Aspinwall*, 40 Nev.

divorce recited that the court had jurisdiction *is not conclusive and it may be contradicted.*" (R. 614; italics added.) There has never been any question but that, if not successfully contradicted, the Nevada decree would be controlling. The court has, therefore, abandoned (either upon reconsideration or by the force of *Williams II*) what apparently was its earlier position, that the burden was on him who offered a foreign divorce decree to show jurisdiction of the foreign court. *Bowditch v. Bowditch*, 314 Mass. 410, 416.

55, 184 Pac. 810; *Walker v. Walker*, 45 Nev. 105, 198 Pac. 433; *Latterner v. Latterner*, 51 Nev. 285, 274 Pac. 194. If neither party is a resident of Nevada, the necessary jurisdiction over the subject matter is not gained even though both parties appear before the court. *Tiedeman v. Tiedeman*, 36 Nev. 494, 499, 137 Pac. 824; *Worthington v. District Court*, 37 Nev. 212, 214, 233, 142 Pac. 230.¹²

This Court has consistently applied the same rule under the full faith and credit clause. "Under our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on domicil. . . . The framers of the Constitution were familiar with this jurisdictional prerequisite, and since 1789 neither this Court nor any other court in the English-speaking world has questioned it." *Williams v. North Carolina*, 325 U. S. 226, 229. Such were the rulings in *Bell v. Bell*, 181 U. S. 175; *Streitwolf v. Streitwolf*, 181 U. S. 179; *Andrews v. Andrews*, 188 U. S. 14; *Winston v. Winston*, 189 U. S. 506, No. 227, Oct. Term, 1902; *Williams II*, *supra*; and *Esenwein v. Commonwealth*, 325 U. S. 279; and such were the bases of the Court's reasoning in *Barber v. Barber*, 21 How. 582; *Cheever v. Wilson*, 9 Wall. 108; *Cheeley v. Clayton*, 110 U. S. 701; *Atherton v. Atherton*, 181 U. S. 155; *Lynde v. Lynde*, 181 U. S. 183; *Harding v. Harding*, 198 U. S. 317; *Thompson v. Thompson*, 226 U. S. 551; *Davis v. Davis*, 305 U. S. 32; and *William I*, *supra*.

Under *Haddock v. Haddock*, 201 U. S. 562, it was necessary, in order to determine jurisdiction, to seek out the locus of the "matrimonial domicil." It was easily located in the case of the happily married but rather fugitive in the case of those who litigated. In the event of separation, "matrimonial domicil" followed the husband; except that, if the separation were the fault of the husband, then "mat-

¹² There is, on the other hand, no failure of Nevada jurisdiction because the divorce happened to be granted on the cross-complaint of the admittedly non-resident defendant. See text of Nev. Comp. Law, 1941 Supp., sec. 9460, *supra*; *State v. Moran*, 37 Nev. 404, 142 Pac. 534.

rimonial domicil" remained with or followed the wife. "Matrimonial domicil" was not only a fiction, but one the refined application of which could produce rather whimsical results, and the concept has wisely been discarded. *Williams I*, 317 U. S. at 293-304.

It by no means follows that, because "matrimonial domicil" is an aggravating fiction, the same must be true of "domicil" as such. To require that the divorce court must be within a jurisdiction where at least one of the parties resides and makes his home is simply to ensure that a decree so impregnated with public policy will be directed to persons appropriately subject to that public policy. The divorce policy of the Nevada statutes, one must suppose, was framed for those who live in Nevada and not for those whose homes are in Massachusetts. Conversely, so long as both parties to a marriage live in Massachusetts, the conditions upon which they may be divorced are the concern of Massachusetts and not at all that of Nevada. The legitimate and exclusive interest of Massachusetts in a purely Massachusetts marriage and divorce, and the complete lack of a legitimate Nevada interest in such a marriage and divorce, are not fictions. Nor more is the concept of domicil, as a jurisdictional prerequisite for divorce, for this is simply a convenient way to say that the Nevada divorce court has no business granting a divorce to people who live in Massachusetts and not in Nevada.

It is true, as the dissenting opinions in *Williams II* point out, that it is not always easy to determine the fact of domicil. This is not because "domicil" is an illusory or fictional concept but because it is not always easy to tell where a man makes his home—especially if he is attempting, as was petitioner, to perpetrate a fraud upon the Massachusetts and the Nevada courts. But the occasional difficulties of proof are surely less significant than the virtues of the underlying principle that no state should attempt to decree the divorce policy governing a marriage where both parties live in another state. So, at least, this Court has always

held, in rulings recently and unequivocally reaffirmed in the *Williams II* and *Esenwein* cases.

3. *The Nevada decree.* We are met, against this background of plain fact and settled law, by the probability that the full faith and credit question need not be reached, and that even the Nevada court has not found that petitioner was domiciled there. His divorce complaint alleged that he had, for more than six weeks, been "a *bona fide* resident of . . . the State of Nevada" (R. 599). It did not allege either domicile or an intention to reside indefinitely in Nevada. Petitioner's affidavit for publication of summons did, however, allege that he was "domiciled within the State of Nevada" (R. 598) and he testified, perfunctorily, that he intended to make Nevada his home (R. 585). The trial judge made no finding as to petitioner's intention to make Nevada his home, no finding as to his domicile within Nevada, and no finding as to his residence in Nevada. He found only "that the Court has jurisdiction of the plaintiff and defendant and of the subject matter involved" (R. 588-589).

Respondent does not deny that this might be construed as a judicial determination that petitioner was domiciled in Nevada, since under Nevada law the court otherwise would not have jurisdiction "of the subject matter involved" (*supra*, pp. 23-24). It could, on the other hand, be argued with much force that the failure to make a specific finding as to domicile, or even as to residence, was neither oversight nor an over-terse adoption of the statutory and case law of Nevada. The trial judge, beyond any doubt, had seen many plaintiffs come into his court room swearing to a Nevada domicile with their traveling bags already packed; he had, too, at least a fleeting opportunity to observe petitioner's demeanor and the stereotyped nature of his evidence. A reasonably conscientious judge, who was yet in the process of becoming hardened to the Nevada divorce jurisdiction, might very well be prepared in view of the apparent assent of the parties to enter a general con-

clusion that he had jurisdiction and yet be unwilling to use his judicial office to find as a fact that petitioner intended to make Nevada his home.

It is unnecessary to choose among these alternative explanations of the Nevada decree. The important point is that the decree does not purport in terms to adjudge petitioner to be either a resident or a domiciliary of Nevada. There is, therefore, no question necessarily presented of giving full faith and credit to an adjudication of petitioner's domicile. The full faith and credit clause, in its farthest extension, could hardly be thought to require the invalidation of the Massachusetts statute, the frustration of its domestic relations policy, and the disregard of its judicial findings made after a full trial, simply in order to give effect to an inferred finding by the Nevada divorce court.

Respondent, therefore, respectfully suggests that this is not an appropriate case to decide whether the Massachusetts statute and policy and judicial determination must be invalidated because of the operation of the full faith and credit clause. Questions so weighty are, by long tradition of this Court, postponed until such time as they are squarely presented. See *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 346-348; *Rescue Army v. Los Angeles*, No. 574, Oct. Term, 1946, pp. 18-25; and cases cited. Those issues are not squarely presented until the Nevada court has unequivocally found that the Massachusetts resident is domiciled in Nevada, and has by that finding prepared the way for a square conflict of judicial determination of the jurisdictional fact of domicile.

If, however, the Court should construe the Nevada decree to be an adjudication of Nevada domicile, we submit that the Nevada decree cannot conclude the Massachusetts courts from inquiring into the Nevada jurisdiction.

B. The Nevada Decree Is Not Conclusive Upon the Massachusetts Courts.

The Nevada divorce decree was beyond the jurisdiction of the Nevada court since neither petitioner nor respondent was domiciled there. The sole remaining question is whether the full faith and credit clause compels the Massachusetts courts, which do have jurisdiction, to enforce, against the settled public policy of Massachusetts, this decree of the Nevada court, which did not have jurisdiction.

1. *A judgment in excess of jurisdiction need not be given full faith and credit.* The Nevada decree, assuming it to embrace a sufficiently specific finding of a Nevada domicil, would be immune in the Nevada courts against an action to vacate it for want of domiciliary jurisdiction. *Confer v. Second Judicial District Court*, 49 Nev. 18, 234 Pac. 688; 236 Pac. 1097; *Chamblin v. Chamblin*, 55 Nev. 146, 27 P. (2d) 1061; *Calvert v. Calvert*, 61 Nev. 168, 122 P. (2d) 426. This result is placed upon the metaphysical ground that the false allegation of domicil is fraud "intrinsic" rather than "extrinsic" to the decision, and also, in the *Chamblin* case, upon the much more practical ground—so far as concerns the Nevada courts—that there otherwise would be unending litigation. This Nevada rule does not, of course, answer the issue before this Court. It merely shows that there is an issue under the full faith and credit clause and statute; were the Nevada rule otherwise, Massachusetts would have without question the same power to re-examine a Nevada judgment as may be exercised by the Nevada courts. *Halvey v. Halvey*, 330 U. S. 610, 614.

So far as concerns the full faith and credit requirements, the rule is well settled that the judgment of a sister-state may be impeached in the court of the forum by evidence showing want of jurisdiction in the foreign court. *D'Arcy v. Ketchum*, 11 How. 165, 176; *Public Works v. Columbia College*, 17 Wall. 521, 528; *Thompson v. Whitman*, 18 Wall. 457, *Thormann v. Frame*, 176 U. S. 350; *Tilt v. Kelsey*, 207 U. S. 43, 53, 59; *Burbank v. Ernst*, 232 U. S. 162, 163; *Chi-*

cago Life Ins. Co. v. Cherry, 244 U. S. 25, 29; *Roche v. McDonald*, 275 U. S. 449, 454; *Adam v. Saenger*, 303 U. S. 59, 62; *Treimies v. Sunshine Min. Co.*, 308 U. S. 66, 78; *Milliken v. Meyer*, 311 U. S. 457. This rule has many times been applied to hold that the divorce decree entered in one state may successfully be attacked in the courts of another upon showing that the decree was entered without jurisdiction of the subject matter because neither party was a *bona fide* domiciliary of the state. *Bell v. Bell*, 181 U. S. 175; *Streitwolf v. Streitwolf*, 181 U. S. 179; *Andrews v. Andrews*, 188 U. S. 14; *Winston v. Winston*, 189 U. S. 506; *German Savings Society v. Dormitzer*, 192 U. S. 125, 128; *Williams v. North Carolina*, 325 U. S. 226; *Esenwein v. Commonwealth*, 325 U. S. 279.¹³

Since neither petitioner nor respondent was domiciled in Nevada, the divorce decree of the District Court of that State was in excess of its jurisdiction and may under long settled law be attacked in the Massachusetts courts.

2. *Respondent's participation does not save the Nevada divorce decree.* The only substantial issue presented by this case is whether the Massachusetts courts are in some manner bound to enforce the Nevada decree, notwithstanding that it was beyond the Nevada jurisdiction, because respondent appeared before that court in person and filed an answer and cross-complaint, on which the decree was entered. This issue was squarely presented and unequivocally decided in *Andrews v. Andrews*, 188 U. S. 14, and *German*

¹³ The rule has always been accepted in the decisions holding that, since domicile was shown, the foreign decree was entitled to full faith and credit. *Barber v. Barber*, 21 How. 582; *Cheever v. Wilson*, 9 Wall. 108, 123; *Atherton v. Atherton*, 181 U. S. 155, 162; *Lynde v. Lynde*, 181 U. S. 183; *Harding v. Harding*, 198 U. S. 317; *Thompson v. Thompson*, 226 U. S. 551, 561; *Williams v. North Carolina*, 317 U. S. 287; see *Bates v. Bodie*, 245 U. S. 520, 527-528.

Haddock v. Haddock, 201 U. S. 562 stands alone in squarely requiring "matrimonial domicile" for jurisdiction, but the dissenting as well as the majority opinion recognized that the domicile of one party must be shown (201 U. S. at 608).

Savings Society v. Dormitzer, 192 U. S. 125 (*supra*, pp. 18-21). The same result, however, would be compelled if those cases had never been decided.

The problem has conceptual complications because it involves a series of closely related principles—*res judicata*, estoppel, comity and the full faith and credit clause—which are ordinarily treated more or less interchangeably in the opinions. We believe, so far at least as this issue is concerned, there is nothing to be gained by a nice discrimination between the rules of *res judicata* and those of estoppel as applied to a party to the former litigation. It seems, on the other hand, necessary to place the full faith and credit issue against the background of (a) the common law rules of *res judicata* as applied to domestic judgments, and (b) the rules of comity, if the constitutional question—which alone is before this Court—can properly be understood.

(a) *Res judicata and domestic judgments*. The general rule is clear: no judgment is *res judicata*, even as between the same parties and with respect to the same cause of action, unless the court had jurisdiction, both of the parties and of the subject matter, to render it. *Am. Law Inst., Restatement, Judgments*, sec. 5; *Freeman, Judgments*, secs. 333, 337.

To this rule there is one exception which is recognized in all courts: where in the first trial the parties have actually litigated the jurisdictional issue, whether it be one of law or of fact, the decision is *res judicata* as to jurisdiction itself as well as to all other issues involved. See *Forstyth v. Hammond*, 166 U. S. 506, 517; *Baldwin v. Traveling Men's Assn.*, 283 U. S. 522, 525; *American Surety Co. v. Baldwin*, 287 U. S. 156, 165; *Stoll v. Gottlieb*, 305 U. S. 165, 177.

The domestic counterpart of the issue before this Court is the capacity of the party who has appeared in the first suit, but has not despite this opportunity litigated the jurisdictional issue, to defend against the plea of *res judi-*

cata on the ground that the original court was without jurisdiction. In some circumstances and in some courts the collateral attack upon jurisdiction will be allowed. This is on the theory that jurisdiction is in any case necessary for *res judicata*, or that jurisdiction of the subject matter cannot be conferred by consent of the parties. See, e.g., *Valley v. Northern Fire Ins. Co.*, 254 U. S. 348, 356; *Freeman*, Judgments, Secs. 337, 377, 642, 661; cases cited 14 Am. Jur. 380-381, 30 *id.* 940-941. A majority of the decisions, however, hold that with respect to domestic judgments *res judicata* applies to jurisdictional as well as to other issues, or reach the same result by raising an estoppel against the party who has participated in or benefited by a judgment. See, e.g., *Des Moines Nav. Co. v. Iowa Homestead Co.*, 123 U. S. 552, 558-559; *Chicot County Dist. v. State Bank*, 308 U. S. 371, 378; *Freeman*, Judgments, Secs. 350, 376, 660, 710; cases cited 31 Am. Jur. 86-87, 93. It goes beyond the necessities of this case to attempt any wholesale reconciliation of these decisions,¹⁴ see *Stoll v. Gottlieb*, 305 U. S. 165, 176, for this Court faces no question of the common law of *res judicata* as applied to domestic judgments but simply one as to the constitutional limitations upon the power of Massachusetts to make its own choice among these competing decisions when the judgment pleaded in bar is not domestic but that of a sister state.

(b) *Comity*. There is no such diversity of decision in the common law doctrine of comity. The principles of comity offer no impediment whatever to the Massachusetts courts in rejecting a divorce obtained from a foreign court

¹⁴ Perhaps the most thoughtful examination, producing a rather complex reconciliation on the ground of the strength of the competing policies for *res judicata* and against excess of jurisdiction, is found in *Am. Law Inst. Restatement*, Judgments, sec. 10. Comment (c) to this section notes that a collateral attack on jurisdiction is in any case possible, notwithstanding the appearance of the parties, when neither the jurisdictional nor any other issue is litigated.

lacking jurisdiction. Indeed, the foreign judgment, even if the jurisdiction were unchallenged, is given only *prima facie* and not conclusive weight on the merits. *Hilton v. Guyot*, 159 U. S. 113, 163-187. Under the settled doctrines of comity, the court of the forum is always free to inquire into the jurisdiction of the court whose judgment is offered as *res judicata*, whether or not the party challenging the judgment appeared in the foreign proceeding, so long at least as the jurisdictional issue were not actually litigated in the foreign court.¹⁵ *Rose v. Himely*, 4 Cranch 241, 269-271; *Freeman*, Judgments (5th Ed.), Secs. 1484, 1510a; *Beale*, Conflict of Laws, Sec. 450.9. Thus, in *Stirling v. Spirling*, [1908] 2 Ch. 344, the English court refused to recognize a South Dakota divorce of British subjects even though the husband was present in the South Dakota proceedings and the wife appeared through an attorney.

(c) *Full Faith and Credit*. The constitutional and statutory requirements that full faith and credit be given to the judgments of sister states present an issue differing both from the common law doctrine of *res judicata* as applied to domestic judgments and the much more limited requirements of comity for foreign judgments.

It is clear enough that the full faith and credit clause and statute were not designed to place the sister-state judgment on the same footing as a domestic judgment, but simply to crystallize and to afford a federal sanction for the common law principles of comity. *McElmoyle v. Cohen*, 13 Pet. 312, 325; *Williams v. North Carolina*, 325 U. S. 226, 228-229.

¹⁵ It is not entirely clear whether the foreign judgment is conclusive under the principles of comity even if the jurisdictional issue were actually litigated before the foreign court. Thus, a foreign judgment may be attacked for fraud (false testimony) even though the same issue were raised in the foreign court. *Abouloff v. Oppenheimer*, [1882] 10 Q. B. D. 295, *Vadala v. Lawes*, [1890] 25 Q. B. D. 310; see *Hilton v. Guyot*, 159 U. S. 113, 207-210. Although it would seem to follow *a fortiori* that jurisdictional issues are not foreclosed, we have found no case in which the precise issue was raised.

In one respect only did these federal requirements change the prevailing common law doctrines of comity: the judgments of courts of competent jurisdiction were made conclusive, not merely *prima facie* evidence, of the merits. But the very cases which formulated this additional requirement over the rules of comity were careful to point out that full faith and credit did not compel recognition of judgments in excess of jurisdiction. *McElmoyle v. Cohen*, *supra*, 326-327; *D'Arcy v. Ketchum*, 11 How. 165, 175-176; *Hilton v. Guyot*, *supra*, 184-185. The Constitutional Convention itself apparently viewed the precursor of the full faith and credit clause¹⁶ as substantially identical with Randolph's phrasing, which in terms made the binding operation of the foreign judgment dependent upon jurisdiction, for it committed both to the Committee of Style, 2 *Farrand*, Records of the Federal Convention, 448.

The force, then, to be given the judgment entered with jurisdiction of the parties but not of the subject matter, when the jurisdictional issue was not litigated, is this: In the case of domestic judgments, a majority but not all of the courts will hold it immune to collateral attack. In the case of a foreign judgment it is under the uniformly followed rules of comity always open to collateral attack. It necessarily follows, since in an attack upon jurisdiction the guiding principles under the full faith and credit requirements are to be drawn from the rules of comity and not from those of domestic judgments, that the sister-state jurisdiction is open to attack.

The Court will note, that, even were the conclusion otherwise, and the Nevada judgment given by full faith and credit the same status in the Massachusetts courts as a Massachusetts judgment, there is nothing to compel its automatic enforcement. Even in the case of domestic judgments, the best rule seems to be that there may be collateral

¹⁶It was drawn from par. 3 of Art. IV of the Articles of Confederation, and offered in much the same form to the Constitutional Convention.

attack on jurisdiction when there was no litigation of any issue in the original suit. Am. Law. Inst., *Judgments*, Sec. 10, Comment (c). And Massachusetts is surely not forbidden by the Constitution from adopting the majority, the minority, or the more refined A.L.I. rule of *res judicata* as applied to domestic judgments. The full faith and credit clause, in short, ensures only that the foreign judgment will be given full respect under the principles of comity; it does attempt to serve as a magic talisman for the traveling litigant and gives no command to the Massachusetts courts that the party offering the foreign judgment must in every case prevail on all issues related to the judgment. *Fall v. Eastin*, 215 U. S. 1, 15; *Bagley v. General Fire Extinguisher Co.*, 212 U. S. 477, 480.¹⁷

Those considerations indicate quite plainly, as a matter of principle, that the full faith and credit clause does not preclude the Massachusetts courts from accepting a challenge to the jurisdiction of a Nevada court when its judgment is offered as *res judicata* in Massachusetts, and that even though the assailant of the Nevada judgment appeared in those proceedings. The decisions of this Court are equally clear and entirely uniform.

Massachusetts would have been required to accept the Nevada judgment as *res judicata* only if the jurisdictional fact had actually been litigated in Nevada and a decision

¹⁷ Mr. Justice Holmes, concurring in the *Fall* case, said (215 U. S. at 15):

Now if the Court saw fit to deny the effect of a judgment upon privies in title, or if it considered the defendant an innocent purchaser, I do not see what we have to do with its decision, however wrong.

Again, speaking for the Court in the *Bagley* case, he said (212 U. S. at 480):

If the judgment binds the defendant it is not by its own operation, even with the Constitution behind it, but by an estoppel arising out of the defendant's contract with the plaintiff and the notice to defend. * * * Even if wrong, [the decision] did not deny the Michigan judgments their full effect.

reached in favor of jurisdiction. *Baldwin v. Traveling Men's Assn.*, 283 U. S. 522, 525-526; *Davis v. Davis*, 305 U. S. 32, 40; *cf. Treinies v. Sunshine Min. Co.*, 308 U. S. 66, 78.¹⁸

In the case at bar respondent appeared in the Nevada proceedings and could have raised the jurisdictional issue but failed to do so. The unbroken decisions of this Court are that the Massachusetts courts in such circumstances are not barred by the full faith and credit requirements from hearing an attack upon the Nevada jurisdiction. *Thompson v. Whitman*, 18 Wall. 457;¹⁹ *United States v. Walker*, 109 U. S. 258, 265-267; *Carpenter v. Strange*, 141 U. S. 87, 106; *Andrews v. Andrews*, 188 U. S. 14, 30, 40-41; *German Savings Society v. Dormitzer*, 192 U. S. 125; *Clarke v. Clarke*, 178 U. S. 186, 195; see *Chicago Life Ins. Co. v. Cherry*, 244 U. S. 25, 29. We have found no case reaching a contrary result.

We do not consider the rulings of the state courts especially important on the full faith and credit issue now before

¹⁸ It is not too important, given the clarity of the decisions of this Court, that the theory of this exception be squared with the general rule that the full faith and credit clause does not compel recognition of a judgment which is in fact beyond the jurisdiction of the Court. It can, however, be explained on any of several grounds: (a) it is possible that even under the rules of comity, a jurisdictional issue actually litigated will not be reexamined (*supra*, note 15, p. 32). (b) The common law of *res judicata* or estoppel as applied to domestic judgments is so universally applied to foreclose jurisdictional issues actually litigated that a contrary result under full faith and credit would be anomalous in every jurisdiction. (c) As a practical matter, the vice of repeated litigation is much greater, and the dangers both of error and of fraud and collusion much less, when there has been actual litigation of the jurisdictional issues.

¹⁹ In *Thompson v. Whitman* the assailant of the New Jersey decree of forfeiture was aboard when his vessel was seized, received notice in New York of the forfeiture proceedings and failed to appear in them (R. 15, 17, 19-20, No. 570, Oct. Term, 1873). This seems to be the equivalent of an appearance and a failure to take the opportunity to contest jurisdiction, since the New Jersey proceedings were *in rem*, while the assailant was present at the seizure and had adequate notice of the proceedings.

the Court, since the answer is so clear both as a matter of principle and of precedent in this Court. But our examination²⁰ indicates that a very clear majority of the state courts, including at least a dozen jurisdictions, will re-examine the jurisdiction of the foreign divorce court when the assailant appeared in the foreign proceedings and had an opportunity to contest the jurisdictional issue but failed to do so.²¹ We have found only five states where the contrary rule is still followed, and the rulings are as often placed upon grounds of state law as upon full faith and credit.²²

²⁰ The search has not been exhaustive, and the citations in the following two notes include dictum, where it be clear enough, along with actual decision.

²¹ In addition to the Massachusetts cases, we are supported by: *Crouch v. Crouch*, 28 Cal. (2d) 243, 169 P. (2d) 897; *Schaeffer v. Schaeffer*, 128 Conn. 628, 633, 25 Atl. (2d) 243; *Dyal v. Dyal*, 187 Ga. 600, 1 S. E. (2d) 660; *Bonner v. Reandrew*, 203 Iowa 1355, 214 N. W. 537; *Blakestee v. Blakestee*, 213 Ill. App. 168; *Smith v. Foto*, 285 Mich. 361, 367, 368, 18 N. W. (2d) 279; *Hollingshead v. Hollingshead*, 91 N. J. Eq. 261, 265-271, 110 Atl. 19; *Griesi v. Griesi*, 137 N. J. Eq. 336, 340, 44 Atl. (2d) 348; *Golden v. Golden*, 41 N. M. 356, 68 P. (2d) 935; *Matter of Lindgren*, 293 N. Y. 18, 24, 55 N. E. (2d) 849; *Solotoff v. Solotoff*, 269 A. D. 677, 777, 56 N. Y. S. (2d) 5; *State v. Westmoreland*, 76 S. C. 145, 56 S. E. 674; *Wampler v. Wampler*, 25 Wash. (2d) 258, 269; *Holt v. Holt*, 77 F. (2d) 538, 541 (App. D. C.); see, also, *Am. Law. Inst., Restatement, Judgments*, Sec. 10, Comment (c); *Freeman, Judgments* (5th Ed.), Sec. 1429.

²² *Bledsoe v. Seaman*, 77 Kan. 679, 95 Pac. 576; *Norris v. Norris*, 200 Minn. 246, 273, 273 N. W. 708; and *Commonwealth v. Yarnell*, 313 Pa. 244, 251, 169 Atl. 370; are squarely in point. Respondent would probably be subject to an estoppel preventing jurisdictional attack under *McIntyre v. McIntyre*, 211 N. C. 698, 191 S. E. 507, and *Horowitz v. Horowitz*, 58 R. I. 396, 400, 192 Atl. 796. *Sleeper v. Sleeper*, 129 N. J. Eq. 94, 18 Atl. (2d) 1, is opposed but compare the *Hollingshead* and *Griesi* cases above. *Curry v. Curry*, 79 F. (2d) 172 (App. D. C.), raises an estoppel against the party who secured a foreign divorce, and seems to that extent to qualify the *Holt* case above, but the circumstances were aggravated. The New York rule until very recently was contrary to that of Massachusetts but this was on state not federal grounds (see *Glaser v. Glaser*, 276 N. Y. 296, 301, 12 N. E. (2d) 305) and seems no longer to hold

Thus, although there is some contrariety of decision,²³ the majority rule among the state courts is in full accord both with the purpose of the full faith and credit clause and statute and with the uniform rulings of this Court.

3. *The issue is one which controls basic public policy.* We have to this point discussed the power of Massachusetts to protect herself against Nevada divorces, fraudulently procured by Massachusetts residents, as though the issue were one simply of the technical rules of conflict of laws, *res adjudicata* and estoppel. It is, of course, far more than that.

The grave issue of public policy which lies just below the surface of the technical issues goes to the heart of basic social policies of the Commonwealth of Massachusetts. The full faith and credit clause, and the implementing act of Congress, do not operate mechanically, with blind indifference to the domestic policies of the states. There is, it is true, more room for flexible interpretation in the case of statutes than of judgments. But even in the latter category, this Court has frequently recognized the necessity that full faith and credit be interpreted against the background of public policy. *Alaska Packers' Assn. v. Com'n.*, 294 U. S. 532, 546; *Milwaukee County v. White*, 296 U. S. 268, 273-274, and cases cited.

In no field has the Court been more sensitive to the policy of the domiciliary state than in that relating to decrees

(see *Solotoff* case above). See also, *Am. Law Inst. Restatement, Conflict of Laws*, Sec. 112, but compare *Caveat* at Sec. 451; *Freeman, Judgments* (5th Ed.), Secs. 1436, 1437.

²³ The divergent results reached as a matter of conflict of laws is well illustrated by the American Law Institute Restatements. That on *Conflict of Laws* states in one place that the jurisdictional issue of domicile is subject to collateral attack "by any party not personally before the court" (Sec. 111, comment (a)) and at another that no opinion is expressed as to such an attack by one who did appear and denied jurisdiction. (Sec. 451, caveat and illustration.) That on *Judgments*, using a substantially identical illustration, says the judgment is conclusive against one who appeared and denied jurisdiction. (Sec. 10, illus. 2.)

of divorce. "The settled rule" is that the full faith and credit clause, as the other provisions of the Constitution, is not to be construed with "a blind adherence to mere form in disregard of the substance of things." *Andrews v. Andrews*, 188 U. S. 14, 33. The Court has always been aware that in applying the full faith and credit clause to decrees of divorce it must take pains that it will not create a situation by which "the policy of each State in matters of most intimate concern could be subverted by the policy of every other State." *Williams v. North Carolina*, 325 U. S. 226, 231.

We discuss below, in a separate point, a few of the issues of policy which inhere in this case. They are separately discussed only for convenience in presentation; in truth they permeate every aspect of the case and can be excluded at any point only at the risk of deciding as abstract technicalities issues which could finally determine the power of the States of this Union to control their most basic social institution.

C. A Reversal of the Decision Below Would Frustrate the Domestic Relations Policy of Massachusetts.

1. *Nevada should not control Massachusetts marriages.* The marriage relationship is far and away the most important institution of our society, and probably no contemporary social problem arouses more deeply felt controversy than the choice between providing an easy or a difficult divorcement of husband and wife. That problem is not one for this Court. The case presents, instead, a far simpler issue of policy: Whether the life of the marriage should be controlled by the State of domicile or, for those with funds to travel, by the State which has at the moment the most lax laws as to divorce and putative residence.

The problem is real and of some magnitude. Nevada, Idaho and the Virgin Islands require only six weeks residence to file a divorce suit, Arkansas and Wyoming only 2 months, and Florida only 90 days. *Warren, Schouler*

Divorce Manual (1944, 1945) 705-720; Laws of V. I., 1944, No. 14. There were about 502,000 divorces in the United States in 1945, or about 3.6 per 1,000 population. Nevada contributed about 14,000 of these divorces (about 105 per 1,000 population), Florida 21,723 (10.5 per 1,000 population), Arkansas 10,811 (6.3 per 1,000 population) and Wyoming 1,331 (5.7 per 1,000 population).²⁴ Those four states, with only 3.2 per cent of the population, accounted for 9.5 per cent of the divorces in 1945; in the same year they granted about 33,000 divorces in excess of those to be expected, on the basis of the national average, to be obtained by the residents of those states. This suggests that courts of these bargain-counter states were used by non-residents in some 30,000-35,000 cases and that about 7 per cent of the nation's divorces are in fraud of the domiciliary state. This does not show the breakdown of society, nor even a thorough-going ouster of the domiciliary states from control of their own divorcees. But the ratio of fraudulent divorces seems to have more than doubled over the last two decades²⁵ and the trend in this direction may be expected to rise rapidly as competition continues to lower both residence and substantive requirements, and as the national population becomes increasingly mobile.

Whatever the current statistical incidence of the bargain-counter divorce, the destruction of the domestic relations policy of the domiciliary state is just as objectionable in the particular case whether the State must reckon upon

²⁴ The data in the two sentences above are drawn from National Office of Vital Statistics, U. S. Public Health Service, F. S. A., Marriage and Divorce in the United States, 1937-1945, Sept. 10, 1946, pp. 203, 216-217. The data from Nevada are projected, here, from those for 1944 (12,600 divorces and 94.9 per 1,000 population) and prior years. There are no recent data for Idaho or the Virgin Islands.

²⁵ See *Cohen*, Statistical Analysis of American Divorce (1932), pp. 66-78. He finds, after elaborate but reasonably persuasive statistical extensions, that in 1922 only about 3 per cent of American divorcees involved migration to another state in search of an easier and quicker divorce.

dozens or thousands of similar cases in the same year. And, the Court will note, there would be no way, were petitioner's contentions to be accepted, for Massachusetts to protect its domestic relations policy against a State which chose to grant a divorce, for any cause whatever, to "residents" of six days instead of six weeks past.

This Court in *Williams v. North Carolina*, 325 U. S. 226, and *Esenwein v. Commonwealth*, 325 U. S. 279, gave the domiciliary state protection against *ex parte* Nevada divorces. This case presents, as did *Andrews v. Andrews*, 188 U. S. 14, the issue whether the marriage policy of the domiciliary state is to be protected against a joint application by husband and wife for relief from the laws of their domicil.

There cannot, we respectfully submit, be a difference in result. "Marriage, even considering it as only a civil contract, is so interwoven with the very fabric of society . . . that it may not, when once entered into, be dissolved by the mere consent of the parties." Otherwise, there would be a denial of "the authority of the State of Massachusetts to legislate over a subject inherently domestic in its nature and upon which the existence of a civilized society depends." *Andrews v. Andrews*, *supra*. 30-31. This Court in *Williams II* placed its decision in part on policy grounds; these are applicable equally to a joint as to a single effort by fraud to impose Nevada domestic relations upon the domiciliary state. It said (325 U. S. at 231, 232):

"If a finding by the court of one State that domicil in another State has been abandoned, were conclusive upon the old domiciliary State, the policy of each State in matters of most intimate concern could be subverted by the policy of every other State. This Court has long ago denied the existence of such destructive power."

"To permit the necessary finding of domicil by one State to foreclose all States in the protection of their social institutions would be intolerable."

2. *The Massachusetts policy.* This Court is not forced to speculate about the public policy of the Commonwealth of Massachusetts with respect to foreign control of Massachusetts divorces. Ever since 1836 it has had a statutory prohibition against Massachusetts domiciliaries solving their Massachusetts marital problems by resort to the courts of another State. Revised Statutes, 1836, c. 76, sec. 39.²⁶ In its present form, with only minor and irrelevant changes in phraseology from the original enactment, it reads:

A divorce decreed in another jurisdiction according to the laws thereof by a court having jurisdiction of the cause and of both the parties shall be valid and effectual in this commonwealth; but if an inhabitant of this commonwealth goes into another jurisdiction to obtain a divorce for a cause occurring here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth. (G. L. (Ter. Ed.) c. 208, sec. 39.)

The Massachusetts statute derives from earlier court decisions of the Commonwealth and has often been considered by the courts of that Commonwealth. Their decisions have made entirely plain the basic public policy which that legislation crystallizes, and have given it an unusual vitality over the entire 111 years since its enactment.

Justice Séwall in *Barber v. Root*, 10 Mass. 265, 271, decided in 1813, and referring to the easy divorces then obtainable in Vermont, laid the judicial basis for this legislative policy:

“ . . . the operation of this assumed and extraordinary jurisdiction is an annoyance to the neighboring states, injurious to the morals and habits of their people; and the exercise of it is, for those reasons, to be reprobated in the strongest terms, and to be counteracted by legislative provisions in the offended States.”

²⁶ The section was added by the compilers of the Revised Statutes as a codification of the existing case law. See Preface by Theron and Mann (p. vi) and marginal annotation to c. 76, sec. 39.

Justice Putnam in 1817, said that if effect were to be given to a Vermont decree "we should permit another State to govern our citizens." *Hanover v. Turner*, 14 Mass. 227, 231. Chief Justice Shaw in *Chase v. Chase*, 6 Gray 157, 161, applied the statute to hold invalid a Maine divorce procured by both of the Massachusetts parties, since the statute "is not made for the benefit of a party * * * but is made upon high considerations of general public policy and public interest, the provisions of which cannot be waived." The Massachusetts courts have to this day consistently recognized and vigilantly enforced the legislative policy of this statute, without regard to the principles of estoppel which might otherwise have carried weight. See *Smith v. Smith*, 13 Gray 209; *Hardy v. Smith*, 136 Mass. 328; *Andrews v. Andrews*, 176 Mass. 92, *aff'd* 188 U. S. 14; *Langewald v. Langewald*, 234 Mass. 269, 272, 125 N. E. 566; *Cohen v. Cohen*, 319 Mass. 31, 34-36, 64 N. E. (2d) 689; *Sherrer v. Sherrer*, 1946 Mass. Adv. 1193, No. 36, Oct. Term, 1947; *cf. Chapman v. Chapman*, 224 Mass. 427, 113 N. E. 359.²⁷

Their judgment of the importance and the validity of this statute has wholeheartedly been confirmed by this Court in *Andrews v. Andrews*, 188 U. S. 14, 31:

"It follows that the statute in question was but the exercise of an essential attribute of government, to dispute the possession of which would be to deny the authority of the State of Massachusetts to legislate over a subject inherently domestic in its nature and upon which the existence of a civilized society depends."

If that statute were to fall before the full faith and credit clause, the Court continued (p. 32), "the existence of all

²⁷ The Massachusetts courts have, of course, been equally vigorous in protecting the statutory policy against the purely *ex parte* divorce. *Sewall v. Sewall*, 122 Mass. 156, 161; *Maloof v. Abdallah*, 218 Mass. 21, 23, 105 N. E. 438; *Bergeron v. Bergeron*, 287 Mass. 524, 528-529, 192 N. E. 86; *Bowditch v. Bowditch*, 314 Mass. 410, 50 N. E. (2d) 65.

efficacious power on the subject of divorce will be at an end."

3. *The Nevada decree frustrates Massachusetts policy.* The Court is not faced here with an attempt to accomplish a purely academic interference with the basic marriage policies of the Commonwealth of Massachusetts. If petitioner can set up the Nevada decree, procured by fraudulent allegations that he was domiciled in Nevada, as a bar to the power of Massachusetts over the marital relations of Massachusetts residents, he will have accomplished fundamentally different results from that allowed by Massachusetts.

In the first place, the marital difficulties of the parties were pending in the Massachusetts courts at the time petitioner went to Nevada in search of a more accommodating court. On March 25, 1942, the Massachusetts Probate Court after full hearing awarded respondent a decree for separate support and maintenance, and dismissed petitioner's libel for divorce; respondent filed an appeal on April 10, 1942,²⁸ and petitioner left for Nevada on May 31, 1942 (R. 272). The Nevada divorce decree was entered on September 19, 1942, the respondent's appeal from the Massachusetts decree was argued on September 21, 1942, and the Massachusetts decree affirmed on February 23, 1943. *Coe v. Coe*, 313 Mass. 232. There could not be a more thorough intermingling of Massachusetts and Nevada proceedings, nor a more brazen effort to escape the force of a Massachusetts adjudication by fraudulent resort to a forum having no jurisdiction.²⁹

²⁸ The date does not appear in the record but is supplied by Massachusetts counsel for respondent.

²⁹ Indeed, had petitioner disclosed the Massachusetts proceeding to the Nevada court he could not have obtained a divorce on his own complaint. The Nevada rule is that *res judicata* bars a divorce if the plaintiff in another jurisdiction either failed to obtain a divorce, *Silverman v. Silverman*, 52 Nev. 152, 168, 283 Pac. 593; cf. *McLaughlin v. McLaughlin*, 48 Nev. 155, 163, 238 Pac. 402, or unsuccessfully resisted a petition for separate support and maintenance.

In the second place, Massachusetts would not allow an absolute divorce between petitioner and respondent upon the grounds offered to the Nevada court. The complete allegation of the cross-complaint, so far as it showed any ground for divorce, was that "plaintiff has treated the defendant with extreme cruelty" (R. 594). The evidence of extreme cruelty is found in a colloquy of 12 leading questions, to which respondent returned a simple affirmative³⁰ (R. 586). The evidence, even were it believed, would show only that petitioner once either struck respondent or threw a dish at her; that he has been rude and discourteous to her; that he was interested in another woman; that he took an apartment in New York; that he told respondent to leave home because he didn't love her; and that this adversely affected respondent's peace of mind and health. There was no cross-examination or opposing evidence. As we read them, neither the Massachusetts statute, allowing divorce for "cruel and abusive treatment," nor the Massachusetts decisions would permit the divorcement of Massachusetts residents upon evidence such as this. G. L. (Ter. Ed.) c. 208, sec. 1; *Armstrong v. Armstrong*, 229 Mass. 592, 118 N. E. 916; cf. *Mooney v. Mooney*, 317 Mass. 433, 58 N. E. (2d) 748.

In the third place, the Nevada decree would prevent Massachusetts from making proper provision for a resident of Massachusetts left without means of support as the result of a Nevada destruction of the Massachusetts marriage. The March 25, 1942, decree of separate support was "subject to revision from time to time as circumstances may require," (R. 625).³¹ But a valid decree of divorce oper-

Barber v. Barber, 47 Nev. 377, 382, 222 Pac. 284; *Bates v. Bates*, 53 Nev. 77, 96, 292 Pac. 298; cf. *Herrick v. Herrick*, 55 Nev. 59, 25 P. (2d) 378; *Koch v. Koch*, 62 Nev. 399, 405, 152 P. (2d) 284.

³⁰ She did volunteer about 10 words of elaboration to each of the two questions about the effect on her health, but to none of the others (R. 586).

³¹ See, also, *Gifford v. Gifford*, 244 Mass. 302, 305, 138 N. E. 550; *Slavinsky v. Slavinsky*, 287 Mass. 28, 32, 190 N. E. 826; *Watts v. Watts*, 314 Mass. 129, 133, 49 N. E. (2d) 609.

ates to eliminate the obligation of petitioner under the Massachusetts support decree. *Rosa v. Rosa*, 296 Mass. 271, 5 N. E. (2d) 417; *Cohen v. Cohen*, 319 Mass. 31, 34, 64 N. E. (2d) 689.

The Massachusetts courts, it is true, have full power to modify the alimony payments required by a Massachusetts divorce decree. G. L. (Ter. Ed.) c. 208, sec. 37; *Wilson v. Caswell*, 272 Mass. 297, 300-302, 172 N. E. 251; *Watts v. Watts*, 314 Mass. 129, 133, 49 N. E. (2d) 609. They have, however, no power to modify a foreign decree for alimony. *Cohen v. Cohen*, *supra*. The Nevada decree of divorce, therefore, puts it beyond the power of Massachusetts under her own law to make adequate provision for the support of a Massachusetts wife by her estranged Massachusetts husband.³²

This is more than a remotely fancied evil. Respondent is seriously and probably permanently ill; she is incapable of employment or, indeed, of household work (R. 50-51, 473-480). She has no means of support save what she may receive from petitioner (R. 458-461, *cf.* R. 463-464). Surely Massachusetts has an interest in ensuring that the cast-off wife of a Massachusetts marriage does not become a charge upon the relief rolls of the Commonwealth. Surely, on any ground of governmental philosophy, this interest is one which is protected and not defeated by the federal constitution.

The facts of this case present, it is true, two ameliorating circumstances: The Nevada agreement and decree do call for the payment of \$35 a week to respondent, and there were no children by this marriage. It is, however, important to note that any theory which made the Nevada decree here conclusive on the Massachusetts courts would apply equally where there were children and where the Nevada

³² Even the Nevada courts, under Nevada law, cannot modify the divorce decree so far as alimony is concerned, since no power to do so was reserved in the decree. *Sweeney v. Sweeney*, 42 Nev. 431, 179 Pac. 638; *Dechert v. Dechert*, 46 Nev. 140, 205 Pac. 593; *Lewis v. Lewis*, 53 Nev. 398, 2 P. (2d) 131.

decree made even more trifling or no provision whatever for their support.

4. *No compelling ground of policy requires that Massachusetts be forced to accept the Nevada decree.* The reasons suggested above seem to make an overwhelming case for the necessity of allowing Massachusetts and not Nevada to control Massachusetts marriages. We recognize that there is one policy consideration which would suggest, if only other things were equal, the desirability of recognizing the Nevada divorce. But this, when measured against the basic concern of Massachusetts, is not entitled to prevail.

It is unfortunate that respondent and petitioner do not have the same marital status in Nevada as in Massachusetts. And so, too, it is unfortunate that Dawn is probably the legitimate wife of petitioner in Nevada and is not in the state of their domicile. In some cases this might present a troublesome injustice to the innocent second wife. But here, as is evident from the *Statement (supra, pp. 6-9)*, Dawn was an active participant in the fraud on the courts of Massachusetts and of Nevada and deserves scant concern from this Court.

These matters have, moreover, explicitly been faced and squarely answered by this Court. It said, in *Williams II* (325 U. S. at 231; 237):

“Such conflict is inherent in the practical application of the concept of domicile in the context of our federal system. See *Worcester County Co. v. Riley*, 302 U. S. 292; *Texas v. Florida*, 306 U. S. 398; *District of Columbia v. Murphy*, 314 U. S. 441.

“If a State cannot foreclose on review here, all the other States by its finding that one spouse is domiciled within its bounds, persons may, no doubt, place themselves in situations that create unhappy consequences for them. This is merely one of those untoward results inevitable in a federal system in which regulation of domestic relations has been left with the States and not given to the national authority. But the occasional

disregard by any one State of the reciprocal obligations of the forty-eight States to respect the constitutional power of each to deal with domestic relations of those domiciled within its borders is hardly an argument for allowing one State to deprive the other forty-seven States of their constitutional rights."

Conclusion.

For the reasons stated above, it is respectfully submitted that the judgment of the Supreme Judicial Court of Massachusetts should be affirmed.

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